80-137

No.

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

DEPARTMENT OF HIGHWAYS,
STATE OF LOUISIANA,
Appellant-Petitioner,

versus

BEAIRD-POULAN, INC.,
Appellee-Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. CAN DIVERSITY JURISDICTION AGAINST LOUISIANA, BE MAINTAINED BY THE FEDERAL COURT UNDER THE ELEVENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, WHERE THE STATE HAS NOT WAIVED ITS IMMUNITY AND WHERE MONIES FOR RELOCATION COSTS GROWING OUT OF AN EXPROPRIATION MATTER ARE PAID BY THE STATE TREASURER?
2. DID THE UNITED STATES DISTRICT COURT HAVE JURISDICTION TO JUDICIALLY REVIEW A LOUISIANA STATE AGENCY'S DECISION, DENYING RELOCATION ASSISTANCE BENEFITS PURSUANT TO THE *RELOCATION ACT OF 1970, 42 U.S.C. 4601 ET SEQ.?*
3. WHERE THE STATE OF LOUISIANA EXPROPRIATES A 3.172 ACRE STRIP OF GROUND 500 FEET FROM THE REAR OF THE PLANT AND PARKING FACILITIES OF THE OWNER, TAKEN FROM AN UNIMPROVED AREA OF A 16.53 ACRE TRACT, IS THE OWNER OF THE PLANT, A "DISPLACED PERSON" AS DEFINED IN THE *RELOCATION ACT OF 1970, 42 U.S.C. 4601 ET SEQ.?* (See copy of aerial photo at Appendix I).

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ON WRIT OF CERTIORARI TO
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PETITION FOR CERTIORARI

CITATIONS TO OPINIONS BELOW

On July 19, 1976 the United States District Court for the Western District of Louisiana, Shreveport Division, Proceedings No. 17678, ordered the Louisiana Department of Transportation and Development to provide an administrative hearing to Beaird-Poulan, Inc. on their request for relocation assistance.

An administrative hearing was conducted, evidence was received and reviewed. On November 1, 1976, Beaird-Poulan, Inc., through its attorney, agreed not to enter any new factual data in the administrative proceeding and submitted the matter for final ad-

ministrative decision on the record and legal statements contained in its letter of November 1, 1976 (See Appendix H).

The administrative record consisting of pages 376 through 651 of the record on appeal, and other documentary evidence was filed with the United States District Court in Civil Action No. 17-678 of the United States District Court of the Western District of Louisiana, Shreveport Division, on February 16, 1977.

The United States District Court held a hearing on July 8, 1977 necessary to supplement the administrative record, and thereafter reversed the administrative decision and declared Beaird-Poulan, Inc., a *"displaced person"* under the Act. The United States District Court in the *same decision concluded it had jurisdiction to review the administrative record and decision. (1977) 441 Fed.Supp. 866.* (See Appendix E).

From this decision the Louisiana Department of Transportation and Development appealed to the United States Court of Appeal for the Fifth Circuit, in Proceedings No. 78-1242, consolidated with Proceedings No. 78-2904, a per curiam judgment affirming and adopting the judgment and findings of the United States District Court. *(1980) 616 F(2d) 255.* (See Appendix A).

GROUNDS FOR JURISDICTION

The Department of Highways, State of Louisiana, now the Department of Transportation and Develop-

ment, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circiuit, entered on the 30th day of April, 1980 in the matter reported at 661 F(2d) 255.

Jurisdiction of this Court is invoked pursuant to *Title 28, Section 1254, Paragraph 1, United States Code Annotated.* (See Appendix U).

STATEMENT OF THE CASE

In 1970 Beaird-Poulan, Inc., a Delaware corporation, doing business in Louisiana, owned a 16.53 acre tract in Shreveport, Louisiana. The plant facilities were located on the front portion of this tract fronting on Greenwood Road (US 79-80). The respondent company had not expanded its operations rearward since 1951. The balance of the acreage was unimproved land with growing timber (See aerial photograph at Appendix I). The Louisiana Department of Transportation and Development (formerly the Louisia a Department of Highways) expropriated a 3.172 parcel from the unimproved portion of land belonging to Beaird-Poulan. The 3.172 acres expropriated was 500 feet from the rear of the facilities and ground in use at the time of taking on May 3,1971. After the expropriation suit, Beaird-Poulan, Inc. filed suit in the United States District Court to *recover relocation assistance benefits* (the cost to move some of its equipment and machinery from its plant facility), pursuant to the *Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, 84 Stat. 894, 42 U.S.C. 4601 et seq.*

The expropriation of the 3.172 acre parcel of ground from the rear, unimproved portion of respondent's property left a front remainder of approximately 6.5 acres including the plant facilities, and a rear remainder of approximately 6.5 acres of unimproved land. None of the plant facilities were located on the part taken, but were left intact.

After the announcement by the State of Louisiana that it would acquire from the rear, unimproved portion of respondent's tract, and just prior to the formal expropriation, respondent moved some of its plant machinery and equipment from its facility to another location, but it continued to operate out of its facility on the front portion of the non-acquired tract.

It developed that the additional site purchased by Beaird-Poulan had railroad facilities, and occupied, more or less, the same space which its plant occupied on the front of its 16.53 acre tract.

On January 2, 1971 the State of Louisiana began negotiating to purchase the 3.172 acre tract from the unimproved portion of the 16.53 acre tract owned by Beaird-Poulan. The expropriation took place on May 3, 1971. Beaird-Poulan moved its plant equipment and machinery to a new location in April and May of 1971.

The administrative hearing concluded that Beaird-Poulan moved a substantial amount of personal movables from the old plant to the newly acquired facility.

The administrative conclusions and findings were substantially as follows: (See Appendix G)

1. Beaird-Poulan is still the owner of the land area from which it moved its manufacturing operations and continues to occupy the buildings and ground areas for its business operation in some capacity.
2. The acreage to the north side of Greenwood Road was acquired by Beaird-Poulan over a period of years beginning in 1950. The last acquisition was May 13, 1966.
3. All expansion of physical facilities subsequent to the first construction and prior to the expropriation was laterally placed on the land. No rearward improvements were developed subsequent to the original plant construction in 1951.

The administrative hearing concluded that *LSA:R.S. 38:3101 et seq.*, which gave assurance to the Federal Highway Administration that Louisiana would comply with *42 U.S.C. 4601 et seq.*, was not in effect at the time of the expropriation of the Beaird-Poulan property. However, if the applicant had a right to claim benefits under either Statute, then for the reasons stated and based upon the findings made, Beaird-Poulan was not considered as a *"displaced person"* within the meaning of either the State or the Federal legislation, and was

therefore ineligible for the benefits provided by law to "displaced persons".

On November 1, 1976, Beaird-Poulon submitted its claim for final administrative decision on the record and the statement of its legal position in this matter. (See Appendix H).

The administrative decision noted that there was no formal procedure for rehearing, however, permitted the applicant, Beaird-Poulan, if it deemed appropriate, to ask for rehearing within thirty (30) days from the 14th of January, 1977.

Beaird-Poulan did not request a rehearing, but on January 31, 1977 filed a motion to have the administrative record transmitted to the United States District Court for review and for a summary judgment. On February 16, 1977 the Louisiana Department of Transportation and Development filed the administrative record in the United States District Court. The State of Louisiana also filed an opposition to transmit record and a motion for summary judgment. (Appendix P).

The District Court denied both motions for summary judgment and scheduled a hearing on July 8, 1977 to supplement the administrative record. On December 16, 1977, the United States Court entered a judgment, in which it declared the respondent a *"displaced person"*, pursuant to the *Uniform Relocation Assistance Act.*

By agreement, the amount of moving costs was $154,099.71. The State of Louisiana reserved all its rights to contest the judgment of the Court.

From the judgment of the District Court, the Louisiana Department of Transportation and Development filed an appeal to the Fifth Circuit Court of Appeal. After argument, the Fifth Circuit Court of Appeal, on April 30, 1980, rendered a per curiam judgment, affirming and adopting the judgment of the United States District Court as its opinion. (See Appendix A).

The Louisiana Department of Transportation and Development filed this Petition for Certiorari to review the decision of the United States Fifth Circuit Court of Appeal, *(1980) 616 F(2d) 255*, affirming and adopting the decision of the United States District Court, reported at *(1977) 441 F.Supp. 866* (See Appendix D).

The United States District Court, in its judgment of December 16, 1977, based its jurisdiction over the parties and the subject matter pursuant to *28 U.S.C. 1331* and *28 U.S.C. 1361*.

ARGUMENT

In 1970, Congress passed the *Uniform Relocation Assistance and Real Property Acquisition Act, 42 U.S.C. 4601 et seq.* The purpose of the Uniform Relocation Assistance Act was to provide some assistance for persons and businesses that are displaced physically as a result of an ex-

propriation of land on which their home or business are located. It is an assistance or gratuity to those persons or businesses that are displaced. The U.S. District Court does not have jurisdiction over matters involving expropriation by individual states. This issue has long been considered a matter of State Court's Jurisdiction even though the Federal Government assists or reimburses the individual states for a part or percentage of monies advanced by the states for the expropriation of land for highway purposes. The Uniform Relocation Assistance Act should not be considered different from the numerous other Federal Acts where the Federal Government assists the States in reimbursing them for a part or percentage of funds spent for the expropriation of land for highway purposes. The issue of jurisdiction should be the same. The funds that are paid to the person or the business that relocates or have moving expenses as a result of an expropriation of properties on which they have their homes or business establishments, are paid out of the Louisiana State Treasury. Jurisdiction therefore remains with the State.

Beaird-Poulan in its petition to the District Court claims the Court has jurisdiction under the provisions of *28 U.S.C. 1331* and *28 U.S.C. 1361*. The purpose of the Relocation Act was to establish a uniform policy for fair and equitable treatment of persons displaced as a result of taking land for highway purposes. The Act, *42 U.S.C., Section 4622(a)* provides that the head of the *state agency shall make a payment to the alleged "displaced person" upon proper application as approved by such agency head*, and *Section*

4601(3) defines the term *"state agency", but it does not provide for jurisdiction in the United States District Court.*

28 U.S.C. 1361 provides for action to compel an officer of the United States Government to perform his duty, and that matter of jurisdiction is not at issue before this Court. The District Court dismissed the action against the Secretary of the Department of Transportation of the United States Government, which was affirmed by the Fifth Circuit.

28 U.S.C., Section 1331 is the general provision of jurisdiction for diversity and does not apply in this instance.

It is the position of Louisiana that the U.S. District Court and the Fifth Circuit Court of Appeal, lack jurisdiction to hear this matter for the following reasons:

1. This suit seeks to impose a liability which must be paid from public funds out of the Louisiana State Treasury, and is barred by the provisions of the *Eleventh Amendment of the United States Constitution.*
2. There is no provision in *42 U.S.C. 4601 et seq.*, or in *LSA:RS 38:3101 et seq.* to permit jurisdiction in the Federal Court.
3. The federal Court does not have jurisdiction to review an administrative decision of a state agency.

QUESTION NO. 1:

Immunity Provided By The 11th Amendment Of The United States Constitution

Nowhere in *LSA:R.S. 38:3101 et seq.* (see Appendix S) does the State of Louisiana waive its immunity provided by the *11th Amendment of the United States Constitution.* Nowhere in the provision of *Title 42, U.S.C. 4601 et seq.* is there provided any jurisdiction for judicial review of the administrative decision by the United States Federal Court.

The case of *EDELMAN V. JORDAN (U.S.S Ct. 1974) 415 U.S. 651, 94 S.Ct. 1346,* gives a detailed examination of the historical basis of the 11th Amendment. Several recent United States Supreme Court cases analyzed and re-affirmed the *EDELMAN* decision, and explains the limitations of *EX PARTE YOUNG, 28 S.Ct. 441* decision. In *LAKE COUNTRY ESTATE, INC. V. TAHOE REGIONAL PLANNING, (1979) 99 S.Ct. 1171,* a complaint that an agency established by the States of California and Nevada, took some land and devalued properties without due process of law and without just compensation, in violation of the 5th and 14th Amendments of the United States Constitution. The United States Supreme Court concluded in the *TAHOE* case that if the States of California and Nevada retained immunity granted by the *Eleventh Amendment of the United States Constitution, the Federal Court would have no jurisdiction.* The contract between the States of California and Nevada, however, waived its immunity, and by the written agreement, *the Tahoe Agency was not considered a part of the States of Nevada or California. Both States disclaimed*

any intent to confer immunity on the Tahoe Agency. The crucial part of that decision is the language by the Supreme Court, which indicates that if the Tahoe Agency had been an arm of the State of California or the State of Nevada, and if the State Treasury of those two States funded the activities of this agency, then the 11th Amendment of the U.S. Constitution would have applied.

The United States Supreme Court, in *QUERN V. JORDAN, (1979) 99 S.Ct. 1139,* re-affirmed its decision in the *EDELMAN* case, and explained the *EX PARTE YOUNG* decision, *8 S.Ct. 441.* In *LACKAWAMA V. PROCTER & GAMBLE, No. 77-568 (M.D. Pa. 1979)* the State did not raise the issue of Jurisdictional immunity under the 11th Amendment of the U.S. Constitution until after an adverse judgment. The Court held it was not prevented from raising the issue. See also, *FITZ-PATRICK V. BITZER (1976), 96 S.Ct. 2666; JAGNAN-DAN V. GILES (1976) 538 F.(2d) 1166; USRY V. LA. DEPT. OF HWYS. (1978), 458 Fed.Supp. 56; BUILDING ENGINEERS SERVICE V. STATE OF LA. (1978), 459 Fed.Supp. 180.*

In *CAVAHE V. PENNSYLVANIA (1979), 475 Fed.Supp.* 524, a citizen of Pennsylvania brought a civil rights action against the Examiner for the Pennsylvania Liquor Control Board, and complained of infringements on his 1st Amendment rights to political expression. But the Court refused to accept jurisdiction and dismissed the State on its 11th Amendment plea.

The Department of Transportation and Development is a part of the State of Louisiana. This issue has already been decided in *USRY V. DEPT., supra.* The Louisiana Constitution, *Art. III, Sections 1(a), (b), and (c),* sets out the departments and agencies of the State in the reorganization of the Executive Branch of Government. The Louisiana Department of Transportation and Development was affirmed as an agency of the State. It is a part of the Executive Branch of State Government. See also *LSA:R.S. 36:4* and *LSA: La. Const. Art. IV, Section 1,* and *LSA:La. Const. Art. XIV, Section 6.*

The following acts were passed by the Louisiana Legislature following the Constitution:

1. A State agency is *any board, any department, any agency* or *any other entity* of the State. *LSA:R.S. 13:5102.*
2. No suits may be tried against the State or State agencies by jury *LSA:R.S. 13:5105.*
3. The venue in all suits against the State or State agency, or the department of the State, may be instituted before the District Court in which the Capitol is located, or a District Court having jurisdiction. *LSA:R.S. 13:5101(a), and (b).*
4. Suits shall not be filed against the State, State agency, or political subdivision *in any court other than a Louisiana State Court. LSA:R.S. 13:5106.*

The State of Louisiana recognized the Department of Transportation and Development (Department of Highways) as a part of State Government, and *indicated*

its intention to maintain the immunity provided by the Eleventh Amendment to the United States Constitution.

Judge Boyle in the case of *USRY V. LA. DEPT. OF HWYS., supra,* ruled in the same manner as Judge Schwartz did in the above case, and concluded that the Department of Transportation and Development, (formerly the Department of Highways) was a part of State Government, and that any judgment rendered against it would be paid out of the State funds or the State Treasury. See also *BUILDING ENGINEERS V. STATE OF LOUISIANA (1978) 459 Fed.Supp. 180.*

The Court in the *QUERN* case noted that the *ALABAMA V. PUGH (1978) 98 S.Ct. 3057,* was consistent with *MONELL V. DEPT. OF SOCIAL SERV. OF CITY OF NEW YORK (1978) 98 S.Ct. 2018* which was limited to Local government, as well as the *FITZPATRICK V. BITZER, supra,* case, in which claims were based on violation of the 8th and 14th Amendments, and similar to the claims made in *HUTTO V. FINNEY (1978), 98 S.Ct. 2565. The Court in these cases, rejected the arguments on due process and maintained its position that the State was immune from Federal jurisdiction.*

The case of *FORD MOTOR CO. V. DEPT. OF TREASURY, supra,* was an action to recover income tax paid illegally on sales which occurred in the State of Indiana. *The plaintiff alleged a violation of Art. I, Section 8 of the Commerce Clause, and a violation of the 14th Amendment of the United States Constitution.* The Court recognized in the *FORD MOTOR CO.* case *(supra) that the State of Indiana provided a procedure for obtaining the refund of taxes that were paid illegally, but recognized that since the payment of such refund would be paid out of the State Treasury of Indiana, it had no jurisdiction.*

The Court in the *FORD MOTOR CO.* case *(supra)*, indicated that as it had decided in the *GREAT NORTHERN LIFE INS. V. READ, (supra)*, that the construction given to the Indiana statute leaves open the road for plaintiff to seek a review by this Court on the constitutional grounds *after the issues have been passed on by the State Court under the State Statute.*

The provisions of the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq.*, did not provide for jurisdiction in the United States District Court against Louisiana. *LSA:R.S. 38:3101 et seq.*, which is the comparable Uniform Relocation Assistance law enacted by Louisiana, does not provide for a waiver of the State's immunity granted by the *11th Amendment to the United States Constitution. LSA:R.S. 38:3108*, provides that *"any payments herein authorized are gratuities vested in the discretion of the agency head."*

In *LAKE COUNTRY ESTATES V. TAHOE REGIONAL (1979), 99 S.Ct. 1171*, this Court agreed as follows:

> "Before addressing the immunity issues, we must consider whether petitioners *properly invoked the jurisdiction of a federal court.* While respondents did not cross-petition for certiorari, they now argue that the *Bivens rationale does not apply to a claim based on the deprivation of property rather than liberty*, and therefore the Court of Appeals' jurisdictional analysis was defective.

> We do not normally address any issues other than those fairly comprised within the questions presented by the petition for certiorari and any cross-petitions. *An exception to this rule is the question of jurisdiction; even if not raised by the parties, we cannot ignore the absence of federal jurisdiction."*

In ALABAMA V. PUGH (1978), 98 S.Ct. 3507, in a per curiam decision, the United States Supreme Court held that the provisions of the *Eleventh Amendment to the United States Constitution prohibits federal courts from entertaining suits by private parties against states and their agencies.* The Court of Appeals in the *ALABAMA* case did not address this issue. Alabama's Constitution provided that "the State of Alabama shall never be made a defendant in any court of law or equity". This Court concluded in the *ALABAMA* case that the Eleventh Amendment immunity is not merely academic and remanded the case to the 9th Circuit Court of Appeals with instructions to dismiss the State of Alabama and the Alabama Board of Corrections from the lawsuit.

In *RICHIN V. INDUSTRIAL (1974), 502 F.(2d) 1051,* the Court concluded that the state did not waive its immunity when it failed to raise the jurisdictional issue before judgment.

In *WILLIAMS V. EATON (1971), 433 F.(2d) 422,* the Court concluded that the attorney general of the state *could not waive the state's immunity granted to it by the Eleventh Amendment to the United States Constitution.*

In *EDELMAN V. JORDAN, (supra),* the appellate court concluded that Illinois waived its immunity granted by the Eleventh Amendment to the United States Constitution by participating in the federal AABD program. The *Supreme Court concluded the question of waiver or consent necessary to waive the state's immunity must be expressed in unambiguous language, by participating in a federal program or under a federal act which had the effect of consenting to the waiver of immunity, or it was necessary to be done by the Constitution of the state.* In the *EDELMAN* decision, it was suggested that Illinois officials waived their immunity since they did not raise the Eleventh Amendment immunity as a defense *before trial on the merits.* The Supreme Court, in its decision, concluded that Illinois had not waived its right to the defense based on the immunity granted by the Eleventh Amendment.

In *FORD MOTOR CO. V. DEPARTMENT OF TREASURY OF INDIANA (1945), 65 S.Ct. 347,* this Court concluded that Indiana had not waived its immunity from suit in federal court when its attorney general appeared and defended the case.

In a recent well-written decision of *SAVAGE V. PENNSYLVANIA (1979), 475 F.Supp. 524,* the court concluded that it could not consider the relative merits of the arguments until it decided the jurisdictional question raised by the presence of Pennsylvania in the lawsuit in federal court. The opinion reviewed most of the recent Supreme Court pronouncements on the immunity issue and concluded that the Eleventh Amendment has far more serious and wide-ranging implications than had been perceived. It was the opin-

ion of the Court in the *SAVAGE* case that *this immunity is not merely academic (but rather) sufficiently partakes of the nature of a jurisdictional bar, and the Court must raise the question on its own motion, and that the absence of the consent of the state to be sued or a clear abrogation of its immunity by Congress, the Eleventh Amendment insulates both the state and its agencies from federal court jurisdiction.* In the *SAVAGE* case the Court concluded that the importance of all this jurisdictional issue is that the court was compelled to dismiss the state and its agencies because the Eleventh Amendment *operates as a bar to federal jurisdiction.*

QUESTION NO. 2:

The United States District Court Had No Jurisdiction To Review a Louisiana Administrative Agency Decision

42 U.S.C. 4601 et seq. provides that the State should administer the provision of funds for relocation costs to a "displaced person". The Congressional Act does not provide for jurisdiction in a United States Federal Court. It provides that the State shall make provisions for the payment of benefits to "displaced persons."

The Congressional hearing conducted prior to the enactment of the Relocation Act indicates the intent of Congress that the administrative decision should not be subject to judicial review. The Congressional Committee did not want to add to the heavy dockets which the courts now have and make an unnecessary burden on the already crowded court. See *U.S. Code Congressional and Administrative News, Vol. 3, (91st Congress-2nd Session, 1970), Pages 5852-5855* at Appendix R.

The comparable Louisiana Act was not enacted by the Legislative body of the State of Louisiana, *LSA:R.S. 38:3101 et seq.*, until after the expropriation. When Louisiana was ordered to give Beaird-Poulan an administrative hearing, it complied with the provisions of *LSA:R.S. 38:3101 et seq.* and the procedure established by the agency.

LSA: R.S. 38:3107(f), authorized the Department to establish:

> "Procedure for an aggrieved displaced person to have his determination of eligibility or amount of payment reviewed by the head of the agency." (See Appendix S).

Originally, the United States District Court concluded that it had no jurisdiction, and dismissed the complaint on the grounds that the State could not legally comply with *42 U.S.C. 4601 et seq.* until its Constitution was amended. The Constitution was not amended until 1972, when approved by the people of the State of Louisiana. On appeal, this decision was reversed by the Fifth Circuit Court of Appeals in this matter entitled, *BEAIRD-POULAN, INC. V. DEPT. OF HWYS. (1974) 497 F(2d) 54.*

Subsequently, the Court ordered an administrative consideration for relocation assistance request made by Beaird-Poulan. The administrative proceedings were conducted in accordance with the rules and procedures approved by the State of Louisiana. The right-of-way officer made his decision, denying Beaird-Poulan relocation assistance. (See administrative Decision at Appendix G).

The United States District Court did not have jurisdiction to review the state agency's decision.

The Relocation Act was House-substituted amendment S.1 of the 91st Congress. *Senate Report No. 91-488* and *House Report No. 91-1656* clearly demonstrate that Section 102 of the Act *was added by the House, to take relocation benefits out of Court.* At the same time that Section 102 was added by the House, Section 401 of the Senate version, which made the Administrative Procedure Act applicable, was deleted.

Section 102. Finality of determinations.

"This action (sic) provides that any determination by the head of the Federal Agency administering a program or project, as to payments under the act, shall be final, *and that this act does not give any person a cause of action or a defense to an action in any court, or create any new elements of value or damage in any eminent domain proceedings.*" It states also that the provisions of the uniform policy on land acquisition practices, in section 301, do not create any rights or liabilities in any person and do not affect the validity of any acquisition by purchase or condemnation.

"The committee has considered, *but does not agree with, proposals which would make the benefits provided by the bill subject to judicial review.*" The committee agrees with the judgment of the Department of Justice, and others, who believe that this would add an unnecessary burden to the over-crowded courts. *The primary purpose of the judicial review proposals is to give recognition to the principle that such benefits should be viewed as administrative payments to displaced persons.* The committee believes that this objective

can be achieved by the clear language of the bill which makes relocation payments and assistance, and the availability of suitable replacement housing for displaced persons, matters of congressional policy and *makes agency heads responsible for faithful execution.* Section 213(b)(3) of the bill provides an alternate to judicial review, by requiring the heads of Federal agencies to establish regulations and procedures that will assure any person aggrieved by a determination as to eligibility for a payment authorized by this act, or the amount of the payment, may have his application reviewed by the head of the Federal agency having authority over the project; or in the case of a program receiving Federal financial assistance, by the head of the State agency." (Emphasis added.) 3 U.S.C. Cong. and Adm. News 1970-92, pp. 5854-5; compare to Senate Report No. 91-488, p. 22 (Cong. Record Vol. 115 (1969).

The statements of the House Report have long been substantiated by decisions. *RUBIN V. DEPT. OF HOUSING AND URBAN DEVELOPMENT, 347 F.Supp. 555 (E.D. Pa. 1972); BARNHART V. BRINEGAR, 362 F.Supp. 464 (W.D.Mo. 1973).* The Seventh Circuit has held that *Public Law 91-646* does not form a jurisdictional basis in the District Court. *RHODES V. CITY OF CHICAGO, 516 F(2d) 1373 (7th Cir. C.A. 1975).* In *NALL MOTORS, INC. V. IOWA CITY, IOWA, 410 F.Supp. 111 (S.D. Iowa 1975),* the Court again held that the legislative history of Section 102 (4602) clearly showed intent to "preclude review of agency action". Compare to *BARLOW V. COLLINS, 397 U.S. 159, 90 S.Ct. 832 at 837 (1970),* where the rule is acknowledged that 5 U.S.C. 701(a)

does not grant judicial review where "(1) Statutes preclude judicial review. . ." The rule still stands that Congress need not grant rights to judicial review of findings in administrative proceedings. See *TUTAN V. U.S., 270 U.S. 568, 46 S.Ct. 425 (1926),* cited by this Court in *RUSHING V. FINCH, 310 F.Supp. 850 (1970).* See also *CAULFIELD V. U.S. DEPT. OF AGR., 293 F(2d) 217 (5th Cir. 1961).*

Consequently, Louisiana submits that the District Court was without jurisdiction over a suit for judicial review of a Louisiana agency decision to grant or deny benefits under Relocation Assistance Act.

Under the facts found by the agency, Beaird-Poulan was not a *"displaced person" under Public Law 91-646.* There are no reported cases which interpret the portions of *42 U.S.C. 4601(6)* which are material to this case. Consequently, the writer submits that the *administrative interpretations should be given great weight.*

Note that: *Public Law 91-646, Section 213(b)* [*42 U.S.C. 4633(b)*] authorizes the Federal agency heads to establish regulations and procedures to assure:

* * *

> "(3) That any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of a payment, may have his application reviewed . . . in the case of a program or project requiring Federal financial assistance, *by the head of the State agency."*

* * *

Regulations of the U.S. Department of Transportation *(49 C.F.R. Part 25)* and of the Federal Highway Administration *(23 C.F.R. Part 740)* requires the State Agency to provide a *review culminating with the agency head which shall be final.* Louisiana promulgated such procedures and followed it in this instance. The legislative history *(House Report No. 91-1956)* declares relative to *Section* 210 of the Act or *42 U.S.C. 4630,* as follows:

> " This section provides in essence that a State agency shall agree, as a condition of such assistance (Federal financial assistance), to make all relocations payments and provide all assistance as are required by Federal agencies by sections 202, 203, 204 and 205 . . ."

See also, *3 U.S. Code Congressional and Administrative News (1970-92, p. 5865).*

Review of the subject agency decision would be controlled by *LSA:R.S. 49:964* if it is to be reviewable.

Louisiana is in accord with the general body of jurisprudence, making up the rules of administrative law and judicial review, and is substantially identical to the rules of statutory review under the Federal Administrative Procedure Act. *(5 U.S.C. 701 et seq.). ORTEGO V. WEINBERGER, 516 F(2d) 1005 (U.S.C. 5th Cir. 1975).*

The Beaird-Poulan administrative decision should not have been reviewed by the U.S. District Court, nor by the Fifth Circuit Court of Appeals.

A review of a State's agency's decision is beyond the jurisdiction of the Federal Administrative Act *(5 U.S.C. 701 et seq.)*. The courts should only review Federal agency decisions. This claim arose out of State-project receiving monies from the Louisiana State Treasury.

QUESTION NO. 3:
Beaird-Poulan Is Not A "Displaced Person"

Louisiana contends that even if the Federal Court had jurisdiction and even if the United States District Court was correct in reviewing an administrative decision of a State agency involving funds of the Louisiana State Treasury, its interpretation of the term "displaced person" provided by *42 U.S.C. 4601(6)*, was incorrect.

The term "displaced person" is defined as follows:

> "(6) The term "displaced person" means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, *as a result of the acquisition of such real property, in whole or in part . . ."*

This definition by its term, indicates that the person or business *must be physically displaced as a result of the acquisition of such real property, whole or in part.*

In House Report 91-1656, the discussion presented on this definition reveals that *"in whole or in part" language was intended to modify "acquisition"*. In this regard, it is important to note that it is the acquisition of "such real

property in whole or in part" not the acquisition of a parcel or tract in whole or in part. The comments of the committee compelled the conclusion that acquisition of any one of the component elements of "real property" entitles a displaced person to benefits. Louisiana takes the position that the person *must be displaced from that portion of property taken.* In this instance, Louisiana expropriated 3.172 acres from land from an unimproved and unused portion, 500 feet to the rear of Beaird-Poulan's plant facility. The expropriation of the 3.172 acre parcel did not physically disturb the operation of the business of Beaird-Poulan.

Beaird-Poulan contends that it expected in the future to expand its business operation to the rear of the tract. The evidence presented before the administrative body, did not reveal any expansion of plant facilities since the commencement of the business in 1950.

It is evident, that if Beaird-Poulan intended to occupy some of the unimproved land to the rear of the plant facilities at some time in the future, *such future plans should not be considered as present "use", and even if it were a correct position to take,* the evidence establishes before the administrative hearing the following basis of the refusal of relocation benefits:

1. No expansion was made by Beaird-Poulan since 1950.
2. The move to the new location was contemplated because of a desire for lateral expansion, rather than for rearward expansion.

3. The move to the new location was contemplated because of rail facilities.
4. The plant facility, 500 feet to the front of the expropriated strip, is still in use as of today.
5. None of the plant facilities were located in the area expropriated.

Louisiana's administrative decision clearly states the logic *to its interpretation of "displaced persons"*, a part of which is quoted from Page 8 of the administrative decision, as follows:

> "* * * but it is obvious that the warehousing operation or foundary operations could have been relocated instead with virtually no expense and difficulty, since in fact a foundary and some warehousing on the Greenwood Road Property is yet in operation by applicant. The foregoing findings and conclusions are mentioned solely to answer the applicant's contentions; but it is the undersigned's opinion that those findings and conclusions are not necessary to decision of the case for the following reason. It has been the consistent interpretation of *42 U.S.C. 4601(6)* 'displaced persons' by this agency that the alleged displacee must have moved from the acquired parcel of land. The 'in whole or in part' adjective clause does not mean that boundaries of ownership or of possession of contiguous lands are to be considered as defining the 'real property' from which one moves. Rather, the adjective 'such' in the prepositional phrase 'of such real property' identifies the property (land) ac-

quired with the property (land) from which one moves. The term 'real property' refers there to land areas including air-space or water space or subterranean space, as well as surface space. That interpretation is compelled because ownership is not a requisite. If the applicant were merely a gratutious tenant (not illegally in possession) or one with mere possessory rights, it would yet be entitled to moving-expense benefits, if it moved from the acquired parcel. The 'in whole or in part' adjective phrase refers again to 'such real property' which is the land from which personal property was moved. The contrary interpretation (suggested by applicant) would entitle applicant to the cost of relocation if the acquired parcel consisted of only a sight-clearance servitude affecting a ten-foot deep area along the northern-most boundary of the aggregate land area owned by applicant.

" Actually, there is another definition of 'displaced person' which has not been mentioned by the Relocation Assistance Officer nor by applicant and which really covers the factual situation here involved. *42 U.S.C. 4601(6)* continues:

". . . 'displaced persons' means any person who . . . moves his personal property from real property . . . as a result of the acquisition of . . . *other real property, on which such person conducts a business or farm operation.* . . (emphasis supplied).

"The applicant here *is* a person who moved personal property from real property as a result of the acquisition of other real property. But the

other property (acquired land) was not land where it conducted a business operation. The Congressional intent, then, in providing for such a case clearly excludes any reasonableness in applicant's contrary construction of the preceeding definition. The latter clause (or definition) is explained by 'House Report No. 91-1956' (Comm. on Public Works, U.S. House of Representatives):

". . . See 3 U.S. Cong. and Adm. News 1970 (92nd Cong.) at 5854. While the example given is not exclusive, it is again clear that the benefits for moving personal property from lands other than the acquired land are dependent upon the acquired land being 'used' for the business. Again a contemplated use in the future cannot be synonomous with present use. Moreover, it is hereunder that an agency would be required to determine causation also, as the statute provides benefits only where the removal 'results' from the acquisition. Since the acquired land-area was not one where applicant 'conduct(ed)' its operations (nor was there a definitive future-use of a nature sufficient to be a constructive present use), it is not even required to determine the cause of applicant's relocation of its assembly operations to the new site. Nevertheless, if such a determination be required, the evidence does not warrant a finding that the acquisition of parcel 3-acres caused applicant to relocate its assembly operations to the Flournoy-Lucas Road site; and, therefore, the relocation did not 'result' from the acquisition."

Since the Act does not create rights but merely grants benefits, some arbitrariness is allowable in describing the classes of persons to whom the benefits shall go. Physical displacement from present occupancy is the touchstone of the present Act and its predecessors. An extension of benefits to the category of persons occupied by Beaird-Poulan should await congressional action, if such extension is a desirable public purpose. The Congressional definition limiting benefits (for persons moving *from non-acquired land) to a person who "conducts a business" on the acquired land should exclude any other situation.*

In the South Carolina Administrative Decision (see Appendix T), the displacee moved personal property from the acquired real property (a leasehold) and was given benefits. He wanted to move personal property from the non-acquired leasehold also, but was not allowed benefits therefor. There the agency properly acted under the second definition for removal of property from non-acquired property. Although the claimant did qualify under the "conducts a business" provision, the agency found that the removal of personal property from non-acquired property was not an objectively reasonable response. Therefore, the agency found the move would not "result" from the acquisition. In the instant case, Beaird-Poulan does not even meet the "conducts a business" requirement, so the no causation question is properly presented.

CONCLUSION

Louisiana submits it did not waive its immunity provided by the Eleventh Amendment of the United States constitution. Under the broad interpretation of the

cases cited in this writ, Louisiana can urge its exception to the jurisdiction of the United States Federal Court at any stage of the proceedings.

The United States District Court did not have jurisdiction to judicially review a Louisiana administrative agency decision denying relocation assistance benefits to be paid by the State Treasury.

And finally, Beaird-Poulan was not a displaced person, and was not entitled to relocation assistance benefits.

This Court should grant the Writ of Certiorari to review the Judgment of the Fifth Circuit Court of Appeals, and/or alternatively, should order the Fifth Circuit Court of Appeals to dismiss the proceedings, for lack of jurisdiction.

Respectfully submitted,

WILLIAM W. IRWIN, JR. and
JESSE S. GUILLOT
ATTORNEYS FOR THE
LOUISIANA DEPARTMENT OF
TRANSPORTATION
AND DEVELOPMENT

WILLIAM W. IRWIN, JR.
P.O. Box 44245 - Capitol Station
Baton Rouge, Louisiana 70804

PROOF OF SERVICE

STATE OF LOUISIANA
PARISH OF ORLEANS:

BEFORE ME, the undersigned authority, personally came and appeared:

WILLIAM W. IRWIN, JR.

who declared unto me, Notary, that he is one of the attorneys for the Department of Transportation and Development, State of Louisiana, that he hereby certifies that on this date he has served three copies of the foregoing application for a writ to the United States Supreme Court on:

Mr. Thomas J. Wyatt
Attorney at Law
1100 Mid South Towers
P.O. Drawer B
Shreveport, Louisiana 71161

Clerk of Court
Fifth Circuit Court of Appeal
600 Camp Street
New Orleans, Louisiana 70130

by placing same in the United States mail, postage prepaid, on this ____ day of July, 1980, at New Orleans, Louisiana.

_____

WILLIAM W. IRWIN, JR.

SWORN TO AND SUBSCRIBED
BEFORE ME, THIS ____
DAY OF July, 1980

_____

NOTARY PUBLIC

APPENDIX A

616 F.2d (1980) 255

BEAIRD-POULAN, INC.,
Plaintiff-Appellant
Cross-Appellee,

v.

DEPARTMENT OF HIGHWAYS, STATE OF LOUISIANA, Defendant-Appellee
Cross-Appellant,

Neil Edward Goldschmidt, Secretary of Transportation, Defendant-Appellee.

BEAIRD-POULAN, INC.,
Plaintiff-Appellee,

v.

DEPARTMENT OF HIGHWAYS, STATE OF LOUISIANA, Defendant-Appellant.

Nos. 78-1242, 78-2904.

United States Court of Appeals,
Fifth Circuit.

April 30, 1980

Appeals from the United States District Court for the Western District of Louisiana; Ben C. Dawkins, Judge.

Before COLEMAN, Chief Judge, REAVLEY and ANDERSON, Circuit Judges.

PER CURIAM:

We affirm on the basis of the district court's opinion, 441 F.Supp. 866, which is adopted as the opinion of this Court.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

BEAIRD-POULAN, INC.
Plaintiff-Appellant

versus CA No. 17,678

DEPARTMENT OF HIGHWAYS,
STATE OF LOUISIANA et al.
Defendant-Appellees

JUDGMENT

CONSIDERING the previous proceedings had herein, the Judgment of this Court dated December 16, 1977, and the stipulation between plaintiff, Beaird-Poulan Division, Emerson Electric Co. (successor to Beaird Poulan, Inc.) and defendant, Department of Transportation and Development of the State of Louisiana (successor to the Department of Highways of the State of Louisiana) filed herein,

IT IS ORDERED, ADJUDGED and DECREED that there be judgment herein in favor of plaintiff, Beaird-Poulan Division, Emerson Electric Co. (successor to Beaird-Poulan, Inc.) and against the defendant, Department of Transportation and Development of the State of Louisiana (successor to the Department of

Highways of the State of Louisiana) in the full sum of One Hundred Fifty-Four Thousand Ninety-Nine and 71/100 Dollars ($154,099.71), with interest thereon at the rate of 7% per annum from the date of judicial demand until paid.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that plaintiff have and recover all court costs from defendant, Department of Transportation and Development of the State of Louisiana.

THUS DONE and SIGNED at Shreveport, Louisiana, this 20th day of July, 1978.

/s/ BEN C. DAWKINS, JR.
SENIOR JUDGE
United States District Court
Western District of Louisiana

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

BEAIRD-POULAN, INC.,
Plaintiff,

versus

DEPARTMENT OF HIGHWAYS,
STATE OF LOUISIANA, ET AL.,
Defendants.

WHEREAS, this Honorable Court has decreed the plaintiff to be a "displaced person" within the meaning of 42 *U.S.C.* §4601(6), *Pub. Law* 91-646, §101(6); and

WHEREAS, this Honorable Court has ordered the Louisiana Department of Transportation and Development to review the alleged moving expenses of plaintiff herein and to determine the eligible amount thereof by administrative procedure or otherwise; and

WHEREAS, plaintiff has submitted to the Louisiana Department of Transportation and Development, Relocation Assistance Officer claims for alleged expenses and losses under 42 *U.S.C.* §4622 incurred in moving its business and other losses in the amount of $215,008.44; and

WHEREAS, the plaintiff has at the request of the Louisiana Department of Transportation and Development, submitted to the Louisiana Department of Transporation and Development all available documentation, affidavit evidence, advices and responses to its review inquiry; and

WHEREAS, the Louisiana Department of Transportation and Development has administratively determined, according to the most reasonable process available under federal guidelines extent at the time that plaintiff's claims allegedly arose and in accordance with the said Department's current procedure for administrative review and determination, that the total amount of moving expenses and incidental losses to which plaintiff would be entitled as a "displaced person" under 42 *U.S.C.* §4622 is $154,099.71, all other amounts being declared ineligible under said Act and appropriate regulations; and

WHEREAS, the plaintiff concedes the correctness of the Department's said determination of eligible expenses and losses allowable under 42 *U.S.C.* §4622 and acquiesces in this administrative determination; and

WHEREAS, the Department yet denies that plaintiff qualifies as a displaced person under 42 *U.S.C.* §4601(6) and intends to appeal from the judgment of this Court decreeing contrarily; and

WHEREAS, plaintiff and defendant do hereby stipulate for the purposes of this litigation that, in fact and law, the plaintiff would be entitled to a relocation assistance payment of $154,099.71, if plaintiff be a "displaced person" under 42 *U.S.C.* §4601(6);

Now, then, be it accepted by this Court as fact that the amount of eligible expenses and incidental losses incurred by plaintiff and for which it would be entitled to payment under 42 *U.S.C.* §4622 as a "displaced person" is the total sum of $154,099.71, inclusive. In evidence of which determination, liquidation, and concessions, the parties hereto have, by their counsels of record herein, subscribed their respective names on the date shown, for the purpose of allowing this Honorable Court to enter final judgment awarding said amount to plaintiff and payable by the Louisiana Department of Transportation and Development, all rights of the Louisiana Department of Transportation and Development to appeal any such judgment being reserved solely to the issue and decree that plaintiff is a "displaced person" under 42 *U.S.C.* §4601(6).

WITNESSETH:

Emerson Electric Company
as successor to the rights
of Beaird-Poulan, Inc.,
herein, PLAINTIFF, this
20th day of July, 1978.

/s/ THOMAS J. WYATT
Thomas J. Wyatt
Of Counsel

Department of Transportation
and Development of the
State of Louisiana (Successor
to Department of Highways of
the State of Louisiana) this
17th day of July, 1978.

/s/ W. W. IRWIN, JR.
W. W. Irwin, Jr.
Of Counsel

/s/ JONATHAN C. HARRIS
Jonathan C. Harris
Of Counsel

APPENDIX D

BEAIRD-POULAN DIVISION OF
EMERSON ELECTRIC COMPANY

versus Civ.A.No. 17678

DEPARTMENT OF HIGHWAYS,
STATE OF LOUISIANA,
and Claude S. Brinegar, Secretary of Transportation

United States District Court,
W.D. Louisiana
Shreveport Division

Dec. 16, 1977.

OPINION

DAWKINS, Senior District Judge.

Plaintiff, Beaird-Poulan Division of Emerson Electric Company (Beaird-Poulan) brought this action under The Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970 (The Act), 42 U.S.C.A. §4601, *et seq.*, to recover moving and relocation expenses from the Department of Transportation and Development of the State of Louisiana (DOTD).[1] Plaintiff also seeks an order of mandamus

1 The Department of Highways, originally named defendant in this action, was abolished by La.Acts 1976, No. 513, and its functions transferred to the Secretary of the Department of Transportation and Development, an executive department of this State.

requiring the federal Secretary of Transportation to obtain assurances that Louisiana will comply with The Act.

Suit was filed on March 14, 1972, but dismissed on September 24th of 1973 because of our interpretation of certain provisions of the Louisiana Constitution of 1921. See 362 F.Supp. 547 (W.D.La., 1973). The Fifth Circuit disagreed, reversed, and remanded,[2] holding that The Act was applicable to Louisiana on January 2, two months prior to Beaird-Poulan's move.

On July 19, 1976, we ordered the State, through DOTD, to entertain Beaird-Poulan's claim for relocation assistance and to grant a full, fair, and complete adversary administrative hearing. We specifically retained jurisdiction to consider the administrative treatment on Beaird-Poulan's claim.

DOTD has not held an adversary hearing. It has rebuffed plaintiff's request for relocation assistance. The agency contends that Beaird-Poulan is not a displaced person within the coverage of The Act. All steps for reconsideration have been taken and the administrative decision now is final.

After return of the administrative record to this Court, Beaird-Poulan and DODT filed cross-motions for summary judgment. Both of these were denied. After a hearing, necessary to supplement the adminis-

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2 *Beaird-Poulan, Inc. v. Department of Highways, State of Louisiana*, 497 F.2d 54 (5th Cir. 1974), cert. den., 420 U.S. 990, 95 S.Ct. 1424, 43 L.Ed.2d 670 (1975).

trative record, held on July 8, 1977, we took the entire matter under advisement upon briefs to be filed. All such briefs now having been received, we proceed to decision on the merits.

FINDINGS OF FACT

1. When the action was filed, Beaird-Poulan was a Delaware corporation engaged in manufacture and assembly of power chain saws in Shreveport, Louisiana. Emerson Electric Company since has acquired all assets of Beaird-Poulan and it now is known as the Beaird-Poulan Division of Emerson Electric Company which now has acquired and succeeded to all rights of Beaird-Poulan, Inc., including the cause of action asserted herein. From 1950 through April of 1971, Beaird-Poulan and its corporate predecessor, Poulan Saw Company, had carried out their manufacturing activities at a plant located on Greenwood Road in Shreveport.

2. Facilities at the Greenwood Plant were located on a seventeen-acre tract of land owned by plaintiff. This tract was rectangularly shaped, measuring roughly 250 feet in width fronting on Greenwood Road and extending rearward 2700 feet. Plant facilities occupied only the front portion of the tract; property to the rear was not in use.

3. Prior to 1971, Beaird-Poulan had made various additions to the Greenwood facility to increase plant capacity. Between 1969 and 1971, the national (and

international) chain saw market entered a period of great expansion. Technological advances led to substantial reductions in chain saw weights. These light weight saws generated a new and rapidly expanding market of so-called casual users. The relatively low cost of the smaller saws was off-set by the high volume potentials of sales. Beaird-Poulan began design of a light weight saw in 1969. Two years later, in the spring of 1971, the new consumer-oriented saw was just being produced. By all management judgments, substantial additional physical expansion to the Greenwood Plant was imperative to meet even the most conservative production forecasts.

4. In the spring of 1970, Beaird-Poulan learned that a portion of its Greenwood Road property was to be expropriated for a federally assisted limited access highway project designated as No. I-220-I(73)12, commonly known as Interstate By-pass 220. Formal negotiations for acquisition of the proposed interstate right-of-way from Beaird-Poulan began in January of 1971. Judgment of expropriation was entered May 3, 1971. This taking severed Beaird-Poulan's property into two roughly equal tracts of about six and one-half acres each. No part of Beaird-Poulan's plant facility actually was located within the three-acre portion expropriated.

5. During March and April of 1971, Beaird-Poulan moved its manufacturing and assembly operations to a newly purchased plant site located on Flournoy-Lucas

Road, also in Shreveport. This move was made as the result of the pending expropriation proceedings (brought by the State Department of Highways, under its powers of eminent domain). Expansion of plant facilities was necessary to meet conservative production forecasts. It is clear that Beaird-Poulan's officers and directors favored adding the Greenwood Road Plant as the cheapest and most practical alternative. Only after they learned of the pending expropriation and concluded that there would not be sufficient space for the required improvements on the front half of the Greenwood tract did management seriously consider moving the plant. Severed from the existing plant facilities by a limited access highway, the rear portion of the Greenwood property no longer was available for plant expansion. Shortly after formal expropriation proceedings were instituted, Beaird-Poulan purchased and moved to the Flournoy-Lucas Plant. The new plant was located on approximately the same acreage as the Greenwood Plant prior to expropriation.

CONCLUSIONS OF LAW

We have jurisdiction over the parties and subject matter of this action 28 U.S.C.A. §1331(a), 28 U.S.C.A. §1361.

Questions concerning our jurisdiction and the justiciability of this action earlier have been raised and resolved. Defendants argue that judicial review of agency determinations under The Act is expressly prohibited.

We disagree. No part of The Act precludes judicial review of subchapter 2 benefit determinations. Indeed, a proposed amendment to The Act in the House of Representatives, which would have denied the right of judicial review in all instances, was omitted from the final bill. The conclusion is inescapable that Congress did not intend to prohibit all judicial review. See *Barnhart v. Brinegar,* 362 F.Supp. 464 (W.D.Mo., 1973).

A number of recent decisions have found that sections of subchapter 2, providing for relocation assistance, are judicially enforceable and that agency actions under these sections are subject to review. *Tullock v. State Highway Commission of Missouri,* 507 F.2d 712 (8th Cir., 1974); *Ledesma v. Urban Renewal Agency of Edinburg, Texas,* 432 F.Supp. 564 (S.D. Tex. 1977); *Dawson v. United States Department of Housing and Urban Development,* 428 F.Supp. 328 (N.D. Ga., 1976); *Moorer v. Department of Housing and Urban Development,* 417 F.Supp. 1261 (W.D.Mo., 1976); *Boston v. United States,* 424 F.Supp. 259 (E.D.Mo., 1976); *Sheeherman v. Lynn,* 404 F.Supp. 1318 (M.D.Pa., 1975); *Whitman v. State Highway Commission of Missouri,* 400 F.Supp. 1050 (W.D.Mo., 1975); *Lewis v. Brinegar,* 372 F.Supp. 424 (W.D.Mo., 1974).

The Uniform Relocation Assistance Portion of The Act plainly was designed to standardize treatment of persons required to vacate premises as the result of Federal *and federally assisted,* land acquisitions. The Act contains the following declaration of policy:

"The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal *and federally assisted* programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole." 42 U.S.C.A. §4621. (Emphasis supplied.)

The Act provides for payments by the United States Government to compensate displaced persons. Beaird-Poulan's claim for moving-related expenses is predicated upon 42 U.S.C.A. §4622(a) which provides:

"(a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall make a payment to any displaced person, upon proper application by such agency head, for—

"(1) actual reasonable expenses in moving himself his family, business, farm operation, or other personal property;

"(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and

"(3) actual reasonable expenses in searching for a replacement business or farm."

As a condition of receiving federal financial assistance, the various States have agreed to provide the benefits of The Act. Pursuant to regulations of the United States Department of Transportation (49 C.F.R. Part 25) and the Federal Highway Administration (23 C.F.R. Part 740), Louisiana has established procedures whereby DOTD must determine applicants' eligibility arising from federal assisted projects within this State. See La.R.S. 38:3101, *et seq.*

This action was brought against DOTD because that agency refused to entertain Beaird-Poulan's claim for relocation expenses. Cut off from expected administrative procedures, Beaird-Poulan herein sought a money judgment against the State for its moving expenses. The decision by the Fifth Circuit, on appeal from our original dismissal of the complaint, established Beaird-Poulan's right to apply for relocation benefits. Because of the protracted litigation between Beaird-Poulan and DOTD concerning the Greenwood expropriation, in this action and in the State Courts, Beaird-Poulan objected to our order of July, 1976, providing for administrative review of its claim for moving expenses. Plaintiff felt that the adversary relationship would preclude impartial consideration by DOTD's reviewing officers. Although this action was brought in order to by-pass administrative procedures, a final decision has been made by DOTD. Our function thus is to review that decision denying relocation assistance ben-

efits. None of the factual findings by DOTD officers are in dispute. The only question now before us concerns proper construction of the statutory definition of "displaced persons."

Relocation benefits are reserved for "displaced personns," as defined by The Act, 42 U.S.A. §4601, which provides in pertinent part:

> "As used in this chapter—
>
> * * * * *
>
> "(5) The term 'person' means any individual, partnership, corporation, or association,
>
> "(6) The term displaced person means any person who, on or after January 2, 1971, *moves from real property or moves his personal property from real property,* as a result of the acquisition of such real property, in whole *or in part,* or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or *with Federal financial assistance;* and solely for the purposes of sections 4622(a) and (b) and 4625 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.
>
> * * * * *"

(Emphasis supplied.)

The question before us is whether Beaird-Poulan falls within the defined class of "displaced persons." DOTD and the Secretary of Transportation vigorously argue that it does not. Defendants interpret the definition of "displaced persons" in 42 U.S. C.A. §4601(6) so as always to exclude applicants who did not remove personal property from within the boundaries of acquired land unless that land was being used as a business or farm operation as contemplated by, the latter part of §4601(6). Put another way, DOTD will not entertain application for reimbursement of the costs of moving a business when the move resulted from federally assisted expropriation *of less than all the applicant's real property and the acquired portion was not currently used for business purposes.* Beaird-Poulan's administrative claim was rejected because no part of the Greenwood Plant facility was located upon the three-acre tract taken for Interstate I-220.

Beaird-Poulan argues that the clear language of §4601(6) provides that it is a "displaced person," entitled to relocation assistance and that the interpretation of that statutory definition made by DOTD and the Secretary of Transportation is strained and unsupported. We agree.

According to DOTD, a person is never displaced by a partial taking unless that part of the property in use is located within the right-of-way. Emphasis is placed upon the word "such" in the subsection (6) language "moves from real property . . . as a result of the ac-

quisition of *such* real property. . . ." Without there being more to The Act, the requirement that the applicant actually move from the property acquired would be plausible. However, the quoted language from subsection (6) is followed by the qualifying clause "in whole or in part." Read in context, the definition, paraphrased, includes persons who are forced by circumstances to move from real property as the result of a partial acquisition of such real property. Beaird-Poulan did just that. Acceptance of the agency interpretation of subsection (6) renders meaningless the clause "in whole or in part."

Defendants contend that "in whole or in part" refers not to spatial divisions of a tract of land but to components of ownership, providing for coverage under the Act if less than a full ownership interest in property is acquired. A portion of House Report No. 91-1656[3] is offered to support this view. At hearings held in contemplation of uniform relocation assistance legislation, Post Office representatives had testified that their facilities often were privately constructed, then leased to the Government. The suggestion that this testimony underscores defendants' view of the subsection (6) language "in whole or in part" is without merit. The testimony by Postal officials is included in the House Report as an illustration of congressional intent to provide benefits for displacements result-

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3 H.R.Rep.No. 1656, 91st Cong., 2nd Sess. (1970), reprinted in 1970 U.S.Code Cong. & Ad. News 5850, 5853.

ing from a federal project even if the property was not acquired directly by the federal agency. See *Moorer, supra.* The language of subsection (6) did not originate in the 1970 Uniform Relocation Act but substantially was adopted from the Relocation Assistance section of the Federal-Aid Highway Act of 1968. The legislative history of that act does not support defendants' narrow construction of subsection (6).

Defendants have insisted that the only way a person who does not actually move personal property *from the acquired right-of-way* can receive relocation benefits is if the tract *actually taken* was used for a business or farm operation under the so-called second definition of subsection (6). However, the legislative history of The Act clearly shows that this provision was intended to benefit those, especially in rural areas, who might reside on one tract of land and operate a store or other facility on a separate possibly non-contiguous tract. If the business property were taken for a federally assisted project and the owner could not relocate in the immediate area, The Act would cover expenses of moving from the dwelling located upon property no part of which was taken for the project. This extended definition of displaced persons is thoroughly consistent with logical construction of the first portion of subsection (6).

We have found no reported decisions which directly illuminate issues before us. Neither does the legislative history of The Act or of the Federal-Aid Highway Act of 1968 offer any guidance. Notwith-

standing, the policies and purposes of The Act are clear and its provisions should be so interpreted as to effectuate congressional intent.

By the plain language of §4601(6), Beaird-Poulan qualifies as a displaced person. Interpretation of that statute advanced by DOTD and the Secretary of Transportation, which excludes Beaird-Poulan from coverage under The Act, imposes requirements not found in The Act itself. An administrative determination on questions of law does not have any presumption of correctness, and although it might be entitled to some weight or special consideration, it is by no means conclusive. *Strachan Shipping Co. v. Shea*, 276 F.Supp. 610 (S.D.Tex., 1967), aff'd on other grounds, 406 F.2d 521 (5th Cir. 1969), cert. den., 395 U.S. 921, 89 S.Ct. 1773, 23 L.Ed.2d 238 (1969). We must accept that the provisions of The Act express what Congress indeed intended. To the extent that interpretation of one of those provisions serves to narrow or restrict the grant of relocation assistance, such is inconsistent with The Act and cannot be allowed to stand. *See Tullock, supra; Moorer, supra.*

It appears that the narrow definition of "displaced persons" advanced by defendants is colored by practical considerations. They fear that, without objective standards, benefits may go to unworthy applicants. The Act does not require that assistance be given to every person who loses a portion of his land to a federally assisted project. Reimbursement of expenses is due only when it can be shown that the owner moved as a result of the partial acquisition.

In addition to its claim against DOTD for moving expenses, Beaird-Poulan seeks a mandamus order to compel the Secretary of Transportation to comply with the requirements of 42 U.S.C.A. §4630. That provision mandates that the Secretary, before approving any grant to or contract with a State Agency for a federally assisted program, receive satisfactory, assurances that the State agency will provide the benefits of The Act to persons displaced by that program.

Although DOTD now has submitted assurances that it will comply with The Act, none were provided for the period during which Beaird-Poulan was displaced. Without question DODT is obliged to provide relocation benefits for persons displaced by projects covered by The Act after January 2, 1971, the effective date of The Act. It appears that, that under these circumstances, issuance of a mandamus order against the Secretary of Transportation would accomplish nothing. Accordingly, we decline to do so.

DOTD has not yet reviewed Beaird-Poulan's claimed moving expenses. Accordingly, we direct DOTD, within thirty days from this date, to review these claims in accordance with our ruling that Beaird-Poulan is a displaced person as defined by The Act. If an amicable settlement is not forthcoming, DOTD and Beaird-Poulan will, upon motion of either party, be required to appear before us for determination of the amount of reimbursement due plaintiff.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

BEAIRD-POULAN DIVISION OF
EMERSON ELECTRIC COMPANY

versus CA No. 17,678

DEPARTMENT OF HIGHWAYS,
STATE OF LOUISIANA, and
CLAUDE S. BRINEGAR,
SECRETARY OF TRANSPORTATION

JUDGMENT

The case having come on for trial before the Court, Honorable Ben C. Dawkins, Jr., Senior District Judge, presiding, and the issues having duly been tried, and a decision having been rendered,

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment in favor of defendant Claude S. Brinegar, Secretary of Transportation, against Beaird-Poulan Division of Emerson Electric Company, dismissing its action for mandamus, at the cost of the defendant Secretary of Transportation;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there be judgment in favor of plaintiff,

Beaird-Poulan Division of Emerson Electric Company, against the Department of Transportation and Development, State of Louisiana, declaring Beaird-Poulan a displaced person within the coverage of the Uniform Relocation Assistance And Real Properties Acquisition Policies Act of 1970, at the cost of the defendant Department of Transportation and Development.

IT IS FURTHER ORDERED that the defendant Department of Transportation and Development, State of Louisiana, review, within thirty (30) days from this date, Beaird-Poulan's claimed moving expenses and that, if no agreement is reached on the amount of reimbursement due under The Act, Department of Transportation and Development and Beaird-Poulan will be required, upon the motion of either party, to return to this Court for a determination of such reimbursement.

JUDGMENT READ AND SIGNED at Shreveport, Louisiana, this 16th day of December, 1977.

/s/ BEN C. DAWKINS, JR.
BEN C. DAWKINS, JR.
UNITED STATES
SENIOR DISTRICT JUDGE

ENTERED 12-16-77

APPENDIX F

(Title Omitted)
No. 17,686

PRE-TRIAL STIPULATION

A conference of attorneys was held in the above entitled cause on the 28th day of June, 1977.

Thomas J. Wyatt appeared as counsel for plaintiff, Beaird-Poulan, Inc.

Jonathan C. Harris appeared as counsel for defendant, Department of Transportation and Development, successor to Department of Highways, State of Louisiana.

Frances O. Allen appeared as counsel for the Secretary of Transportation.

1. No jurisdictional issues were disposed of. Defendants reserve all rights under jurisdictional motions heretofore filed and overruled by the Court.

2. The following disposition was made of pending motions: No motions are pending.

3. In general, the plaintiff claims:

* * *

APPENDIX G

STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT
OFFICE OF HIGHWAYS

P.O. BOX 44245
CAPITOL STATION
BATON ROUGE, LA. 70804

January 7, 1977

STATE PROJECT NO. 451-30-05
F.A.P. NO. I-220-1 (73) 12
SHREVEPORT BY-PASS
(JUNCTION I-20 LAKESHORE
DRIVE EXTENSION)
STATE ROUTE LA I-20
CADDO PARISH

PARCEL NO. 3-18

IN RE: REVIEW OF CLAIM BY BEAIRD-POULAN, INC. FOR BENEFITS UNDER RELOCATION ASSISTANCE ACT

Beaird-Poulan, Inc. has appealed disapproval of its application for relocation assistance benefits. The undersigned reviewing officer acts herein on behalf of

the head of the agency (Department of Transportation and Development, State of Louisiana, successor to Department of Highways) pursuant to regulations duly adopted by the agency. The record of the appeal is composed of evidence submitted by the claimant and by the Relocation Assistance Officer of this agency in support of and in denial of eligibility of the claimant and is indexed *infra*.

PREFACE

This applicant originally made demand upon this agency for relocation assistance benefits in 1971. This agency would not entertain the claim. Thereafter, applicant made judicial demand against this agency for benefits in the U.S. District Court for the Western District of Louisiana, Shreveport, Louisiana. Eventually, that Court ordered the applicant to submit a formal claim to this agency and ordered this agency to entertain such claim according to all applicable procedures. Upon submission of the claims to the District Relocation Assistance Officer (in Shreveport, Louisiana), same was disapproved for reason that applicant was not eligible for benefits. The disapproval was then taken under consideration as an appeal by the agency's Chief Relocation Assistance Officer. The latter made certain findings and ruled that applicant was not a "displaced person" within the meaning of the legislation providing benefits and, therefore, recommended affirmance of the disapproval of Beaird-Poulan, Inc.s claim.

OPINION

The findings of the Chief Relocation Assistance Officer were not disputed by applicant and same are incorporated here.

1. Claimant is Beaird-Poulan, Inc., a Delaware Corporation doing business in Louisiana at all times material, hereinafter referred to as B-P.

2. On and after January 2, 1971, B-P occupied a land area in Caddo Parish, Louisiana, by means of permanent buildings, parking facilities and personal (movable) property located thereon, whereat B-P conducted an industrial manufacturing operation, described as Municipal No. 5320 Greenwood Road, Shreveport, Louisiana.

3. After January 2, 1971, the Louisiana Department of Highways initiated negotiations for the acquisition of a land area (Parcel 3-18) adjacent to land occupied by B-P's said manufactory; and thereafter the Department acquired by expropriation Parcel 3-18 hereinafter described:

One (1) certain tract or parcel of land, together with all the rights, ways, privileges, servitudes and advantages thereunto belonging or in anywise appertaining, situated in the Parish of Caddo, State of Louisiana, Sec-

tion 18, Township 17 North, Range 14 West, and shown as Parcel No. 3-18 on a white print of a plat of survey made by John L. Cotton, Civil Engineer, dated October 6, 1969, revised, said tract or parcel of land required in full ownership and being outlined in red on said plat of survey, annexed to the above entitled and numbered suit, said tract or parcel of land being more particularly described, according to said plat of survey, as follows:

> Begin at the point of intersection of the south line of the property of defendand and the westerly right of way line of State Project No. 451-30-06, from said point of beginning run thence North 35 degrees 26 minutes 24 seconds East, along said westerly line a distance of 196.00 feet to a point; thence North 32 degrees 32 minutes 34 seconds East, along said westerly line a distance of 100.51 feet to a point on the north line of the property of defendant, and corner; thence South 88 degrees 45 minutes 13 seconds East, along said north line a distance of 541.30 feet to a point on the easterly right of way line of State Project No. 451-30-06, and corner; thence South 27 degrees 52 minutes 46 seconds West, along said easterly line a distance of 276.27 feet to a point on the south line of the property of defendant, and corner; thence North 88 degrees 51 minutes 29 seconds West along said south line a distance of 579.83 feet to the point of beginning.

Being a portion of the same property acquired by Beaird-Poulan, Inc. by Deed dated June 7, 1960, and recorded in Book 890 at Page 766 of the Conveyance Records of Caddo Parish, Louisiana.

4. The land area described as Parcel 3-18 was acquired for a project receiving federal financial assistance, to-wit: Federal Aid Project No. I-200-1(73)12.

5. The boundary of the expropriated parcel nearest to the occupied land area was approximately 500 feet behind (in relation to Greenwood Road) the rear-most improvements on the occupied land area.

6. Subsequent to initiation of negotiations for acquisition of said Parcel 3-18, B-P relocated its said manufacturing to other lands described as Municipal No. 5020 Flournoy-Lucas Road, Shreveport, Louisiana.

7. The subject relocation included the removal of a substantial amount of personal (movable) property from the old manufacturing operations site to the new. The specific cost of the removal of said personal property will be discussed hereinafter.

8. None of the said personal property removed or relocated was removed from the land acquired by the Department (Parcel 3-18).

9. None of the permanent structures, parking areas or other accessory land or improvements utilized by B-P's operations were situated upon the land area acquired by the Department (Parcel 3-18), as said acquired parcel was an unimproved, unoccupied land area.

10. B-P was the owner of the land area it occupied prior to its relocation; and B-P was the owner of the adjacent land area which the Department acquired.

11. The documentation of expenses ($215,-008.44) provided by B-P in connection with the subject claim has not been verified or analyzed and no attempt to do so will be made.

12. The District Relocation Assistance Officer, by letter dated July 30, 1976, disallowed B-P's claim for moving expenses.

13. 42 *U.S.C.* Sec. 4622(a) requires the acquiring authority to pay "actual reasonable expenses in moving . . . his . . . business" to any "displaced persons."

14. 42 *U.S.C.* Sec. 4601(6) defines a "displaced person" as

> ". . . any person who . . . moves from real property, or moves his personal property from real property as a result of the acquisition of *such* real property in whole or in part. . ."

Additionally, applicant calls attention to the circumstances that the acquired parcel of land "was part of a contiguous tract of land owned by Beaird-Poulan, Inc." and "[t]hat the taking physically severed the tract into two non-contiguous ones." In order to present applicant's circumstances most clearly, several plats and an aerial photograph depicting the lands owned by applicant, the lands acquired by the agency and the areas of occupancy at the times involved are included in the record as EXHIBITS.

These EXHIBITS are labeled, respectively, as "LDH Map-1", etc. The claimant submitted several maps and drawings which are included in its formal application as "schedules" and one other map which has been marked "A-1." In addition to the above findings and Exhibits, the findings and rulings (in related expropriation proceedings) of the trial court, of the appellate court and of the Louisiana Supreme Court are included as EXHIBIT "LDH-J-1, etc.," for the background of facts therein provided. The following findings are hereby made based upon the data and exhibits submitted.

1. Applicant is yet the owner of the land area from which it moved its manufacturing operations and Applicant yet occupies the buildings and ground-area for its business operations in some capacity.

2. The aggregate land areas owned by applicant on the north side of Greenwood

Road at the time of the taking were acquired in the three parcels over a period of years beginning in 1950. The last acquisition of land was a parcel of 100' width by a depth of 500'. The latter parcel acquired May 13, 1966, gave the applicant a perpendicular width between parallel side boundaries of 250 feet, and a somewhat longer angular frontage on Greenwood Road.

3. All expansion of the physical facilities subsequent to the first construction and prior to the taking was laterally placed and no rearward improvements were developed subsequent to the original plant construction in 1951. The parcel of land last acquired by applicant (described in "2," *supra*) is situated on the southwesterly corner of its aggregate land area as shown on "LDH-Map-4" etc. The last expansion of physical plant facilities or improvement to any land area was carried out on the said last-acquired parcel proximate to Greenwood Road.

4. "LDH-Map #3" is a blue-line print of an aerial photograph which was exposed prior to the last expansions of applicant onto the last-acquired parcel.

5. "LDH-Map #4" is an aerial-photographic print taken October 23, 1969 which accurately depicts the subject land areas and

improvements at the time of the acquisition of Parcel 3-18 by the State, and even at the present time.

6. Notice is taken of extracts of minutes of four (4) meetings of the Board of Directors of applicant by them submitted, and the affidavit of Mr. J. M. Conly (Conley), an executive officer of applicant. These minutes and testimony are offered to show (presumably) two eventualities: first, that, but for the acquisition of Parcel 3-18 by the State, applicant would have expanded its physical plant rearward onto the acquired parcel; second, that applicant could not expand its manufacturing operations in any other manner short of moving existing equipment, etc. to other lands where expansion could occur.

Assuming (without deciding at this point) that a projected or contemplated future-use of the acquired parcel is a material consideration for purpose of determining whether or not a person is "displaced" therefrom, one would of necessity be compelled to determine whether the future-use was merely speculative or desired, or whether the future-use contemplation was so definite as to be, in truth and actuality, a *present (vis-a-vis* time of acquisition, etc.) occupancy or use of that area. Any lesser extent of materiality of future-use consideration would trigger an infinite number of displacements beyond the reasonable scope

of the pertinent legislation. The undersigned's review of (a) the said minutes, (b) Mr. Conly's (Conley's) affidavit, (c) the testimony of Mr. Conly (Conley) from the expropriation proceedings, (d) the various maps, and (3) plats and schedules of past and projected expansion and the related testimony of Billy Wayne Gary in the expropriation proceedings leads to the conclusion that no definitive plan for expansion of definitive physical facilities onto Parcel 3-18 existed. The evidence reflects adequately that the acquired parcel (3-18) was not occupied by applicant's business operations to any extent. Although, the applicant did in fact move its manufacturing or assembling operations (entailing a substantial move of movable or personal property) to a location on Flournoy-Lucas Road; it is clear that the acquisition of Parcel 3-18 did not interrupt any of the existing operations to any extent whatsoever. Further, I find that Mr. Gary admitted that all contemplated physical-plant improvements could have been located on the land area between the existing improvements and the acquired parcel (3-18); "but for [applicant's] purposes, it was more economical to split the two buildings." Consequently the suggestion that physical expansion was foreclosed is clearly not the case. Equally clearly does it follow that the purchase of an additional 17 acre site with existing physical plants and the relocation of so much equipment and machinery as was done, cannot be deemed as a reasonable response to a mere loss of some economy in not being able to construct a building in an isolated location. Moreover, the plat offered by applicant as Schedule VIII of its

formal application shows that the facilities to which it relocated the subject equipment are all adjoining and not at all dispersed. The undersigned finds that the removal of the assembly operations from the Greenwood Road plant to the Flournoy-Lucas Road plant was made for reasons not disclosed by applicant. The undersigned does note that the new assembly plant location is situated on a Texas & Pacific Railway Co. "spur", whereas its previous location had no rail access; and the applicant corporation was purchased or merged into a larger corporate entity (Emerson Electric Co.) along during this time period. There are so many alternatives suggested by the limited evidence, that it is not reasonable to conclude that applicant corporation purchased a 17 acre site and relocated a large amount of movable fixtures and equipment thereto because of inability to physically expand in the manner which was discussed in 1970. Not only did Mr. Gary admit that the future expansion could have been carried out on the Greenwood Road parcel; but it is obvioous that the warehousing operation or foundary operations could have been relocated instead with virtually no expense and difficulty, since in fact a foundary and some warehousing on the Greenwood Road Property is yet in operation by applicant. The foregoing findings and conclusions are mentioned solely to answer the applicant's contentions; but it is the undersigned's opinion that those findings and conclusions are not necessary to decision of the case for the following reason. It has been the consistent interpretation of 42 *U.S.C.* §4601(6) ["displaced person"] by this agency that the

alleged displacee must have moved from the acquired parcel of land. The "in whole or in part" adjective clause does not mean that boundaries of ownership or of possession of contiguous lands are to be considered as defining the "real property" from which one moves. Rather, the adjective "such" in the prepositional phrase "of such real property" identifies the property (land) *acquired* with the property (land) from which one moves. The term "real property" refers there to land areas including air-space or water space or subterranean space, as well as surface space. That interpretation is compelled because ownership is not a requisite. If the applicant were merely a gratutious tenant (not illegally in possession) or one with mere possessory rights, it would yet be entitled to moving-expense benefits, if it moved from the acquired parcel. The "in whole or in part" adjective phrase refers again to "such real property" which is the land from which personal property was moved. The contrary interpretation (suggested by applicant) would entitle applicant to the cost of relocation if the acquired parcel consisted of only a sight-clearance servitude affecting a ten-foot deep area along the northern-most boundary of the aggregate land area owned by applicant.

Actually, there is another definition of "displaced person" which has not been mentioned by the Relocation Assistance Officer nor by applicant and which really covers the factual situation here involved. 42 *U.S.C.* §4601(6) continues:

> . . . "displaced person" means any person who . . . moves his personal property from real property . . . as a result of the acquisition of . . . *other real property*, on which such person conducts a business or farm operation. . . . (emphasis supplied)

The applicant here *is* a person who moved personal property from real property as a result of the acquisition of other real property. But the other property (acquired land) was not land where it conducted a business operation. The Congressional intent, then, in providing for such a case clearly excludes any reasonableness in applicant's contrary construction of the preceeding definition. The latter clause (or definition) is explained by "House Report No. 91-1956" (Comm. on Public Works, U.S. House of Representatives):

> Whenever the acquisition of real property used for a business or farm operation causes any person to move from other real property used for his dwelling, or to move his personal property from such other real property, or on after the effective date of the Act, such person may receive payments for moving and related expenses under subsections (a) and (b) of section 202, and relocation advisory assistance under section 205. For example, the acquisition of right-of-way for highway improvement in a remote locality may include a general store and gas station, but exclude the

> operator's nearby dwelling or storage facility; or, the acquisition of real property used as a business or farm operation for a reservoir project may exclude the operator's dwelling located adjacent to, but outside the project boundaries.

See *3 U.S. Cong. and Adm. News 1970 (92nd Cong.)* at 5854. While the example given is not exclusive, it is again clear that the benefits for moving personal property from lands other than the acquired land are dependent upon the *acquired land* being "used" for the business. Again a contemplated use in the future cannot be synonymous with present use. Moreover, it is hereunder that an agency would be required to determine *causation* also, as the statute provides benefits only where the removal "results" from the acquisition. Since the acquired land-area was not one where applicant "conduct[ed]" its operations (nor was there a definitive future-use of a nature sufficient to be a constructive present use), it is not even required to determine the cause of applicant's relocation of its assembly operations to the new site. Nevertheless, if such a determination be required, the evidence does not warrant a finding that the acquisition of parcel 3-18 caused applicant to relocate its assembly operations to the Flournoy-Lucas Road site; and, therefore, the relocation did not "result" from the acquisition.

The only case which the undersigned has discovered involving a claim for cost of removal of personal prop-

erty from non-acquired lands is a case reported as "In Re: Application for relocation assistance of William O. Sutton, d/b/a Godfrey's Auto Parts, File 40.671, Project QI-77-1(11), Tract 86, Before the South Carolina State Highway Commission, County of Richland, State of South Carolina." The findings and opinion are attached for informational purposes as this matter is not published for circulation but was received by this agency only in response to a general request for all such decisions.

Therein the State acquired a parcel of land (0.57 Acre) from a larger land area known as Tract 86 (8 Acre). Sutton was lessee of the acquired area and part of the remainder land (total of 6 Acres). Sutton operated a business upon the acquired land (which was frontage) and upon the nearest adjacent remainder. The agency ruled Sutton eligible for benefits to pay the cost of removing his personal property from the newly acquired right-of-way but denied benefits for projected cost of removing personal property from the remainder. Applicant claimed that he was conducting a business on the acquired land *and* upon the remainder and further alleged that he would not continue his business in the same manner as prior to the acquisition, upon the leased remainder. The agency found that Sutton could conduct his business as before by making use of the leasehold remainder and that a reasonable man in like circumstance would not relocate the entire operation. Consequently, cost of relocation of personal property from non-acquired land was denied. The

distinction between that case and the Beaird-Poulan, Inc. case is purely factual. In Sutton, the land acquired was frontage area actually occupied and whereon business was conducted. In Beaird-Poulan, Inc.'s case, only non-occupied rear lands were acquired. In both cases it is held that present-usage is the only material consideration.

Nevertheless, it is not required herein to interpret the finite meaning of "in whole or in part" nor to decide whether that prepositional phrase is an adjective or an adverb, and whether, then, it modified the conjunctive verbs: "moves . . . or . . . moves," the conjunctive objects of prepositional adverb phrases: "from real property, or . . . from real property" or the object of a prepositional adjective phrase "of such real property."

CONCLUSION

The State of Louisiana and particularly the Department of Transportation and Development (successor to Louisiana Department of Highways) administers *La. R.S.* 38:3101 et seq. (1971 supp.) and has given assurances to the Federal Highway Administration that it can and will comply with 42 *U.S.C.* §4601 et seq. (Pub. Law No. 91-646); however, such legislation and assurances were not in effect at the time this applicant's alleged claim arose. Consequently, the undersigned rules as a matter of law that the applicant has no right to claim any benefits under either La. R.S. 38:3101 et seq. or 42 *U.S.C.* §4601 et seq. In the event that the applicant does have a right to claim benefits under either statute (they are identical in the material por-

tions); then, for the reasons heretofore stated and based upon the findings heretofore made, the undersigned rules that applicant is not a "displaced person" within the meaning of either the State or Federal legislation and is, therefore, ineligible for the benefits provided by law to displaced persons. The disapproval of the application is affirmed.

This decision is final upon receipt by the applicant or its agent. There is no formal procedure for re-hearings; however, should applicant deem it appropriate to re-hear its application; then the undersigned will consider such suggestion made within 30 days of date hereof.

Signed this 14th day of January, 1977.

/s/ RICHARD A. CURRIE
RICHARD A. CURRIE
RIGHT OF WAY ENGINEER

INDEX OF ADMINISTRATIVE RECORD

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II. Findings of Chief Relocation Officer

III. Approval of Findings by Applicant's counsel

IV. Exhibit "A-1" — map or plat of applicant's aggregate lands and acquired parcel.

V. Exhibit "LDH-Map #1" — ownership — plat of subject lands, etc.

VI. Exhibit "LDH-Map #2" — plat (close) of acquired parcel

VII. Exhibit "LDH-Map #3" — blue-line print of aerial photo with old boundaries imposed thereon

VIII. Exhibit "LDH-Map #4" — print of aerial photograph of subject lands prior to taking with boundaries thereon superimposed.

IX. Exhibit "LDH-J-1" — Reasons for Judgment in trial court Expropriation

X. Exhibit "LDH-J-2" — Reasons for Judgment in Court of Appeal Expropriation

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XII. Exhibit "T-1" — Transcript of testimony of James M. Conly, Jr. (Conley) at Expropriation trial

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APPENDIX H

Law Offices
HARGROVE, GUYTON, RAMEY AND BARLOW
11th Floor, Mid South Towers
Shreveport, Louisiana
P.O. Drawer B
71161

November 1, 1976

Mr. Richard A. Currie, Right of Way Engineer
State of Louisiana, Department of Highways
Post Office Box 44245, Capitol Station
Baton Rouge, Louisiana 70804

Re: Your File: State Project No. 451-30-05
F.A.P. No. 1-220-1(73)12 - Shreveport Bypass
(Jct. 1-20-Lakeshore Drive Extension) Route
I-220
Caddo Parish
Parcel No. 3-18
Beaird-Poulan, Inc.

Dear Mr. Currie:

Thank you for your letter of October 26, 1976.

In view of the fact that Mr. Morgan has recommended disapproval of the claim of Beaird-Poulan on a

legal interpretation of 42 U.S.C. Section 4601(6), we will not enter any new factual data on this matter.

We do wish, however, to call to your attention the fact that Parcel 3-18, which was expropriated by DOH, was a part of a contiguous tract of land owned by Beaird-Poulan. The taking physically severed the tract into two non-contiguous ones. The record, we think, fully reveals this. However, so there can be no question concerning this matter, I enclose herewith for inclusion in the record, along with this letter, a copy of the Department's "Residual Area Map" for State Project No. 451-30-05.

On the assumption that the record after inclusion of this letter and enclosed map is now closed relative to factual matters, Beaird-Poulan will make no oral presentation and will submit its claim for final administrative decision on the record and the following statement of its legal position:

The facts in this case are, as you point out in your letter of October 21, 1976, undisputed. Beaird-Poulan operated a manufacturing establishment on a tract of land situated in Caddo Parish, bearing Municipal No. 5020 Greenwood Road, Shreveport, Louisiana. Part of the tract was acquired by DOH. The part acquired (designated as Parcel 3-18) physically divided the tract into two substantially equal remainders. None of Beaird-Poulan's buildings were located on Parcel 3-18. However, the record is clear (Schedules IV and XI) that

prior to the initiation of negotiations for the acquisition of Parcel 3-18, Beaird-Poulan planned to expand the Greenwood Road operations. The record is also clear that with the acquisition of Parcel 3-18 expansion became impractical and because of the impending acquisition of Parcel 3-18 Beaird-Poulan moved its plant to another location.

Mr. Morgan decided that since none of the buildings were located on the part of Beaird-Poulan's land acquired by DOH, Beaird-Poulan was not a displaced person. We do not dispute Mr. Morgan's factual finding that none of Beaird-Poulan's buildings were located on that part of the plant site designated as Parcel 3-18. However, we submit that his conclusion that Beaird-Poulan is not a "displaced person" is founded upon misinterpretation of 42 U.S.C. §4201(6).

42 U.S.C. §4601(6) reads in pertinent part as follows:

> "(6) The term 'displaced person' means any person who, on or after the effective date of this Act, moves from real property, or moves his personal property from real property, *as a result of the acquisition of such real property, in whole or in part, ...*" (Emphasis Added)

The Relocation Act does not require that all of the real property concerned be taken from the displaced person. The question involved in this is "Did Beaird-Poulan move its personal property from real property

as the result of an *acquisition of a part of such real property?"* The record fully establishes that it did.

We have been unable to find any reported Court decision on point and are unaware of any administrative regulation dealing with the precise point involved in this case. We are advised by counsel for DOH that his research has resulted in the same. Therefore, we suggest that the plain language of the Act should prevail and that Beaird-Poulan should be determined to be a displaced person and, therefore, entitled to the benefits of the Act.

Please keep me posted.

Very truly yours,

/s/ THOMAS J. WYATT
THOMAS J. WYATT

TJW/meh
Enclosure
cc: Hon. Ben C. Dawkins, Jr., Judge
Jonathan C. Harris, Esq.
Mr. J. M. Conly, Jr.
Mr. D. L. Seals

APPENDIX J

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

BEAIRD-POULAN, INC.,
Plaintiff,

versus CA No. 17,678

DEPARTMENT OF HIGHWAYS,
STATE OF LOUISIANA and
JOHN A. VOLPE, Secretary of
Department of Transportation,
Defendants.

COMPLAINT

The Complaint of BEAIRD-POULAN, INC., a Delaware corporation authorized to do and doing business in the State of Louisiana, with respect represents that:

1.

This is a civil action which arises under a law of the United States, to-wit, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, (hereinafter referred to as the "Act") as hereinafter more fully appears. The matter in

controversy exclusive of interest and costs, exceeds $10,000. This is also a civil action for a mandatory injunction for relief in the nature of mandamus to compel an officer of the United States, to-wit, John A. Volpe, Secretary of Department of Transportation, to perform a duty imposed upon him by the aforesaid Act of Congress. The Court has jurisdiction of this action under the provisions of 28 U.S.C. §1331 and 28 U.S.C. §1361.

2.

The defendants herein are:

(a) DEPARTMENT OF HIGHWAYS, State of Louisiana, a body politic and corporate which has the power to sue and to be sued under the provisions of La. R.S. 48:13 and 22.

(b) JOHN A. VOLPE, Secretary of the Department of Transportation.

COUNT ONE

3.

Plaintiff is a "displaced person" as that term is defined in the Act and in the Rules and Regulations issued by defendant, JOHN A. VOLPE, on May 13, 1971, pursuant to Section 213 of the Act and Memorandum from the President of the United States dated January 4, 1971. Said rules and regulations were published in the Federal Register on May 20, 1971, Vol. 36, No. 98.

4.

As the direct result of the initiation of negotiation by defendant, Department of Highways, for the acquisition of certain real property owned by plaintiff and located in Caddo Parish, Louisiana, plaintiff moved certain personal property from real property on which it conducted a business. More specifically, plaintiff moved machines, equipment, office supplies, and other items of personal property located in its manufacturing plant and offices at Municipal No. 5320 Greenwood Road, Shreveport, Caddo Parish, Louisiana, to a new location at Municipal No. 5020 Flournoy-Lucas Road, Shreveport, Louisiana.

5.

The move took place during the months of April and May, 1971.

6.

The property was being acquired by defendant, Department of Highways, for a federally assigned project, to-wit, Federal Air Project No. I-220-1 (73) 12, as shown by the expropriation proceedings entitled "State of Louisiana, through Department of Highways vs. Beaird-Poulan, Inc." numbered 202,136 upon the docket of the First Judicial District Court, Caddo Parish, Louisiana.

7.

The actual and reasonable expenses incurred by plaintiff in transporting the said personal property, in

packing and crating said personal property, in removing and reinstalling machinery, including reconnecting utilities and in searching for a relocation site, amount to $217,082.46.

8.

The defendant, Department of Highways, has refused to pay said expenses or to process any administrative claim by plaintiff therefor and plaintiff is entitled to a money judgment against the defendant, Department of Highways, in that amount.

COUNT TWO

9.

The allegations of Paragraphs 3, 4, 5, 6 and 7, Count One, are incorporated in this paragraph and Count Two by reference.

10.

Under the terms of the Act, Section 211(c) the mandatory duty is imposed upon defendant, John A. Volpe, to amend any grant to, or contract or agreement with defendant, Department of Highways, to include the cost of relocation expenses.

11.

Under the terms of Section 210 of the Act, the mandatory duty is imposed upon defendant, John A. Volpe, to refuse to approve any grant to, or contract or agreement with the defendant, Department of High-

ways, unless he receives satisfactory assurances from the Department of Highways that fair and reasonable relocation payments shall be provided to displaced persons.

12.

Defendant, John A. Volpe, has failed and refused to amend the grants, contracts, and agreements with defendant, Department of Highways, to include the cost of relocation expenses. Defendant, John A. Volpe, has approved grants, contracts and agreements with defendant, Department of Highways, without receiving assurances from defendant, Department of Highways, that fair and reasonable relocation payments shall be provided to displaced persons and with full knowledge that defendant, Department of Highways, would not provide displaced persons with fair and reasonable relocation payments, all of which contributed to the injury of plaintiff.

WHEREFORE, plaintiff prays:

(a) For judgment on Count One in its favor and against defendant, Department of Highways, in the full sum of $217,082.46, with interest at the rate of 7% per annum from June 1, 1971 until paid; and

(b) On Count Two for a preliminary and permanent mandatory injunction ordering and requiring John A. Volpe, Secretary of Transportation:

(1) To amend all grants, contracts or agreements with defendant, Department of Highways, and in connection therewith all grants, contracts or agreements with defendant, Department of Highways, relating to Federal Aid Project No. I-220-1 (73) 12, to include the cost of relocation expenses as of January 2, 1971; and

(2) To refuse to approve any grant to or contract or agreement with defendant, Department of Highways, unless he receives satisfactory assurances from defendant, Department of Highways, that fair and reasonable relocation payments shall be provided to displaced persons as of January 2, 1971; and

(c) For general and equitable relief and for all costs.

HARGROVE, GUYTON, VAN HOOK AND RAMEY

/s/ Cecil E. Ramey, Jr.
Cecil E. Ramey, Jr.

/s/ Thomas J. Wyatt
Thomas J. Wyatt
867 Texas Eastern Building
Post Office Box 1574
Shreveport, Louisiana 71165

Filed: March 14, 1972

APPENDIX K

(Title Omitted)
No. 17678

ANSWERS AND DEFENSES

Now into Court, through undersigned counsel, comes the Department of Highways of the State of Louisiana, and for answer to the complaint avers as follows:

FIRST DEFENSE

That the complaint fails to state a claim upon which relief might be granted.

SECOND DEFENSE

Answering the allegations of the Complaint, Article 1 thereof is denied. Article 2 is admitted. Article 3 of Count One is denied. Article 4 of Count One, the first portion thereof, is denied except to admit that the respondent, Department of Highways, did attempt to negotiate with the complainant for an unimproved portion of its land located in Caddo Parish, Louisiana; that respondent, Department of Highways, because of a lack of knowledge or information sufficient to form a belief as to the truth thereof, denies the last portion of Article 4 of Count One. Article 5 of Count One is denied because of a lack of knowledge or information

sufficient to form a belief as to the truth thereof. Article 6 of Count One is admitted. Article 7 of Count One is denied because of a lack of knowledge or information sufficient to form a belief as to the truth thereot. Article 8 of Count One is denied except to admit that respondent, Department of Highways, has not paid any expenses or processed any administrative claim of the complainant. The answers to Articles 3, 4, 5, 6 and 7, Count One, supra, are incorporated in respondent's answer to Article 9, Count Two, by reference. Articles 10, 11 and 12 of Count Two are denied.

THIRD DEFENSE

The complaint fails to show irreparable injury and complainant is not entitled to a mandatory injunction as prayed for in Count Two of the complaint.

FOURTH DEFENSE

That John A. Volpe, Secretary of the Department of Transportation, did not violate any of the provisions of the Relocation Assistance Act of 1970, in that Section 120 of the Federal Aid Highway Act of 1970, cited infra, granted the State of Louisiana an extension to comply until July 1, 1972.

FIFTH DEFENSE

Because of constitutional prohibition, respondent, Department of Highways, could not comply with the

Uniform Federal Relocation Assistance and Real Property Acquisition Policy Act of 1970 (formerly Chapter 5 of Title 23, United States Code, Sections 501-512), now Subchapter II of Chapter 61 of Title 42, United States Code, Sections 4621-4638; that the Congress of the United States recognized Louisiana's inability to comply by its enactment of the Federal Aid Highway Act of 1970, Public Law 91-605, 84 Statute 1713, when Section 120 of that act extended the deadline for state compliance from July 1, 1970, to July 1, 1972. That the electorate of Louisiana approved a constitutional amendment (Act No. 182 of 1971) on February 1, 1972, proclaimed by the Governor of Louisiana on February 21, 1972, and under the Law of Louisiana became effective 20 days thereafter or on March 12, 1972.

SIXTH DEFENSE

That Act No. 182 of 1971 is not retroactive in effect.

SEVENTH DEFENSE

That the complainant is without standing to assert the claim contained in its complaint.

WHEREFORE, respondent, Department of Highways, State of Louisiana, prays for judgment in its favor dismissing complainant's suit at its cost and prejudice.

DEPARTMENT OF HIGHWAYS
OF THE STATE OF LOUISIANA

/s/ William W. Irwin, Jr.
William W. Irwin, Jr., T.A.
D. Ross Banister
Chester E. Martin
Counsel for Defendant
P.O. Box 44245, Capitol Sta.
Baton Rouge, Louisiana 70804
Phone: 389-5825

Filed: March 12, 1972

APPENDIX L

(Title Omitted)
No. 17,678

JUDGMENT GRANTING MOTION TO DISMISS

The above entitled cause came before the Court on defendant, Department of Highways, State of Louisiana's Motion to Dismiss.

Mr. Thomas J. Wyatt of Shreveport, Louisiana appeared in behalf of the plaintiff, Beaird-Poulan, Inc., and Mr. William W. Irwin, Jr. of Baton Rouge, Louisiana, appeared in behalf of the defendant, Department of Highways, State of Louisiana.

Whereupon, the matter was argued and submitted and the Court being of the opinion that the law and the evidence are in favor of the defendant, Department of Highways, State of Louisiana, and against the plaintiff, Beaird-Poulan, Inc.:

IT IS ORDERED that judgment be entered in favor of the defendant, Department of Highways, State of Louisiana, and against the plaintiff, Beaird-Poulan, Inc., dismissing plaintiff's complaint.

IT IS FURTHER ORDERED that plaintiff, Beaird-Poulan, Inc. be taxed with all costs.

Dated this 24th day of September, 1973, at Shreveport, Louisiana.

/s/ Ben C. Dawkins, Jr.
Ben C. Dawkins, Jr.
SENIOR JUDGE OF THE
UNITED STATES DISTRICT
COURT FOR THE WESTERN
DISTRICT OF LOUISIANA

Approved as FORM only. All Rights Reserved.

/s/ Thomas J. Wyatt
Thomas J. Wyatt
Attorney for Plaintiff

Filed: September 24, 1973.

APPENDIX M

BEAIRD-POULAN, INC.,

versus

DEPARTMENT OF HIGHWAYS,
STATE OF LOUISIANA, ET AL.

No. 73-3453

United States Court of Appeals,
Fifth Circuit

July 5, 1974

Appeal from the United States District Court for the Western District of Louisiana

---

Before TUTTLE, COLEMAN and AINSWORTH, Circuit Judges.

[5511] COLEMAN, Circuit Judge:

Section 221 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Relocation Act), 84 Stat. 1894, 42 U.S.C. §4601 note, provides:

"(a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act shall take effect on the date of its enactment.

"(b) Until July 1, 1972, sections 210 and 305 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections shall be completely applicable to all States.

"(c) The repeals made by paragraphs (4), (5), (6), (8), (9), (10), (11) and (12) of section 220(a) of this title and section 306 of title III shall not apply to any State so long as sections 210 and 305 are not applicable in such State."

This statute became generally effective on January 2, 1971. States which, because of their laws, could not comply as of that date were given until July 1, 1972 to come into compliance. The legislative history shows that the latter provision [42 U.S.C., §4601(b)] was, in fact, made for the benefit of the State of Louisiana because Congress believed [although erroneously, as will be seen later] that the laws of Louisiana rendered that State unable, at the time, to comply, see Conference Report, No. 91-1780, U.S. News, 91st Cong., 2d Sess., pp. 5465, 5466 (1970).[1]

---

1 By March 12, 1972, Louisiana had amended its Constitution and statutes in a manner intended to remove all doubt of its ability to comply with the Relocation Act. Thus, in this case, we deal with an apparently non-recurrent type of lawsuit.

The Relocation Act specifically stated its purpose:

> "The purpose of this title is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries [5512] as a result of programs designed for the benefit of the public as a whole." (Relocation Act, §201).

Article IV, §2 of the Louisiana Constitution of 1921, at times pertinent to this litigation, provided as follows:

> "The funds, credit, property or things of value of the State, or of any political corporation thereof, shall not be loaned, pledged or granted to or for any person or persons, associations or corporations, public or private; nor shall the State, nor any political corporation, purchase or subscribe to the capital stock or stock or any corporation or association whatever, or for any private enterprise. Nor shall the State, nor any political corporation thereof, assume the liabilities of any political, municipal, parochial, private or other corporation or association whatsoever, except as otherwise provided in this Constitution; nor shall the State undertake to carry on the business of any such corporation or association, or become a part owner therein; provided, the

> State, through the Legislature, shall have power to grant the necessary rights of way through its public lands for the construction of any railroad, or flood control or navigation canal; and provided, police juries and municipal corporations may, in providing for destitute persons, utilize any charitable institutions within their corporate limits for the care, maintenance and asylum of such persons; and all appropriations made to such institutions for the purpose aforesaid, shall be accounted for by them in the manner required of officials entrusted with public funds. . . ."

This, in general, states the legal background for the litigation, here under review.

In April and May, 1971, in connection with the construction of an interstate highway at Shreveport, Louisiana, Beaird-Poulan, Inc., the plaintiff-appellant, in response to expropriation (condemnation) proceedings brought by Louisiana, was required to move machines, equipment, office supplies, and other items from its manufacturing plant and offices to a new location. The cost of the move is alleged to have been [5513] $217,082.46. The Louisiana Department of Highways refused to pay said expenses or to process any administrative claim therefor in compliance with the Relocation Act. The Secretary of the United States Department of Transportation declined to amend grants, contracts, and agreements with the Louisiana Depart-

ment of Highways to include the cost of relocation expenses.

Beaird-Poulan filed suit against the Department of Highways for the recovery of its cost and for unjunctive relief requiring the Secretary of Transportation to enforce the Relocation Act as to it and others similarly situated.

The Department of Highways answered that the complaint failed to state a claim upon which relief might be granted and further answered that because of the constitutional prohibition appearing in Article IV, §12, it could not comply with the Act.

The United States, on behalf of the Secretary of Transportation, moved to dismiss for lack of jurisdiction and because the complaint failed to state a claim upon which relief could be granted.

The District Court dismissed the complaint.

This was done in reliance upon the provisions of the Louisiana constitutional provision and the decision of the Louisiana Supreme Court in Department of Highways v. Southwestern Electric Power Company, 243 La. 564, 145 So.2d 312 (1962). It was further pointed out that Louisiana, under the law then existing, was not *required* (emphasis ours) to pay compensation for relocation costs incurred in expropriation cases, citing Gray v. Department of Highways, 250 La. 1045, 202

So.2d 24 (1967); Louisiana Highway Commission v. DeBouchel, 174 La. 968, 142 So. 142 (1932); Rapides Parish School v. Nassif, 232 La. 218, 94 So.2d 40 (1957); Department of Highways v. Levy, 242 La. 259, 136 So.2d 35 (1962), and Housing Authority of Shreveport v. Green, 200 La. 463, 8 So.2d 295 (1942).

[5514] The District Court concluded that any payment of relocation costs by the State of Louisiana would constitute a gratuity and that such a donation was prohibited by its Constitution, Article IV, §12. Further, since the Louisiana law prevented the Department of Highways from complying with the Relocation Act, the Secretary of Transportation should likewise be dismissed.

It is beyond doubt that in the existing state of the law Louisiana was not *required* to pay relocation costs. As we view the issue, however, this did not necessarily mean that, in the words of the federal relocation statute, it was *unable* to do so.

We do not read Department of Highways v. Southwestern Electric Power Company, *supra*, as shedding any precedential light on this litigation. In that case, the Power Company refused to move its lines and poles from city streets which were to be converted into the interstate highway system unless it was paid for the cost of the relocation. The Louisiana Supreme Court denied removal expense relief on the ground that removal was required by the franchises which had grant-

ed the use of the streets in the first place, for, indeed, under Louisiana law a corporation may not acquire any proprietary interest in a street.

This case was decided in 1962, eight years before the enactment of the federal relocation act. The Federal Highway Act of 1956, as then written, did authorize the payment of relocation costs to public utilities. Of this, the Louisiana Supreme Court said:

> "Finally, counsel, citing the Federal Highway Act of 1956 (23 U.S.C. Sec. 123), assert that, since Congress recognized therein that relocation of utility facilities was a necessary part of highway construction in the interstate highway system and specifically authorized the use of Federal funds to reimburse states for the Government's proportion of the amounts paid to the utilities for costs of relocation of their [5515] facilities, it has evidenced its intent that such relocation costs are unprecedented and should not be required to be borne by the utilities. From this predicate, it is argued that it is improper to hold that the costs of removal should not be paid by plaintiff forasmuch as the law of Louisiana does not prohibit reimbursement and since a proportionate part (90% in this instance) of all monies plaintiff would be required to pay could be recovered from the Federal Government.

> "We find no substance in this contention. Liability of plaintiff for the costs of removal of the utilities' facilities from the public way is not to be determined on its right under the Federal statute to obtain reimbursement of a large proportion of the costs from the United States. On the contrary, such liability is to be resolved by the laws of this State. The fact that our law may not prohibit reimbursement of the utilities has nothing to do with the plaintiffs' *liability* for reimbursement. We hold that no such liability legally exists."

Article IV, §12 of the Louisiana Constitution was not mentioned in the opinion of the Court. It dealt, very clearly, with an *authorization* that federal funds might be contributed toward the relocation costs of public utilities. It did not deal, as here, with a specific congressional command that such relocation costs *should be paid*, the only exception being the provision that a state should not be required to comply prior to July 1, 1972 if its laws rendered it unable to do so.

Left, as we are, with no definitive decision of the Louisiana Supreme Court on the pertinent aspects of Article IV, §12, we must construe it according to its own terms. We see nothing in it to prohibit the expenditure of public funds for a lawfully authorized state purpose. Such could in no wise be considered a loan, a pledge, a grant, or a mere donation.

[5516] In another context, the Louisiana Supreme Court has so held. See Caldwell Brothers v. Board of Supervisors, 176 La. 825, 147 So.5 (1933), wherein it was stated:

> *"The purpose of this article was not to hamper state agencies or boards in the exercise of their proper functions, or in the conduct of their legitimate affairs, but to put an end to the practice of the Legislatures to pledge the credit of the state to aid private enterprises.* Benedict v. City of New Orleans, 115 La. 645, 39 So. 792." 147 So. at p. 7. (Emphasis added).

This reduces us to the ultimate question: Did the laws of Louisiana in April and May, 1971, render the State [the Department of Highways] unable to spend highway funds for relocation costs necessitated by the interstate highway system? We think not.

On the authority of Short & Murrell v. Department of Highways, 233 La. 735, 98 So.2d 170 (1957), involving payment for the construction of a Highway Department Headquarters building, we have no doubt that the State Department of Highways had the authority to contract with the United States for the construction of interstate highways, including all matters necessary, appropriate, or incidental thereto.

Particularly pertinent to this decision were Sections 48:22 and 48:26 of the Louisiana Revised Statutes, which read as follows:

"§22. Powers

The department has all of the rights, powers, and immunities incident to corporation. It may acquire, own, administer, alienate, and otherwise dispose of all kinds of property, movable and immovable, tangible and intangible; contract; adopt, alter, or destroy an official seal; sue and be sued, implead, and be impleaded."

"§26. Incidental powers

Except as otherwise expressly provided by this Chapter, the department may perform every act necessary, conven- [5517] ient, or incidental to the exercise of its power and authority, the discharge of its duties, or the performance of its functions."

Even more appropriate to the issue now under consideration is Section 48:212 of the Louisiana Revised Statutes:

"§212. Agreements with federal government

A. The department may enter into any agreements with the federal government or with any federal agency for the purpose of building or improving public highways and flight strips, to the extent that the federal government or its agency is authorized by federal statutes to enter into such agreements, and with the same limitations."

From all this we conclude that while the State of Louisiana, acting by its Department of Highways, was not required by its own law to pay relocation costs it was, nevertheless, clearly able under those laws to comply with the Relocation Act of 1970. The cited statutes authorized such a course and Article IV, §12 of the Louisiana Constitution does not prohibit it.

The defenses raised by the Secretary of Transportation originate in the argument that Louisiana could not lawfully comply with the Act. Assuredly, he was, and is, willing to comply. Our decision moots the issues raised by him and thus we do not decide them.

The judgment of the District Court is reversed and remanded for further proceedings not inconsistent herewith.

Reversed and remanded.

APPENDIX N

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

BEAIRD-POULAN, INC.,
Plaintiff,

versus CA No. 17,678

DEPARTMENT OF HIGHWAYS,
STATE OF LOUISIANA, ET AL.,
Defendants.

ORDER

This cause came on for hearing on July 13, 1976; present: Jonathan C. Harris, Attorney of the Department of Highways, State of Louisiana, Lawrence L. Jones, Assistant United States Attorney, attorney for the Secretary of Transportation, and Thomas J. Wyatt, attorney for Beaird-Poulan, Inc.

The Court having considered the opinion and mandate of the United States Court of Appeals, Fifth Circuit, in this matter, *Beaird-Poulan, Inc. v. Department of Highways, State of Louisiana*, 497 F.2d 54;

IT IS ORDERED that the plaintiff submit its claim for moving expenses or relocation to the Department of Highways, State of Louisiana, for administrative determination;

IT IS FURTHER ORDERED That the Department of Highways, State of Louisiana, grant to plaintiff a full, fair and complete adversary administrative hearing upon said claim, with a full record thereof being made, in accordance with the opinion and mandate of the United States Court of Appeals for the Fifth Circuit in these proceedings, within sixty (60) days;

IT IS FURTHER ORDERED that this Court retain, and it does hereby retain, jurisdiction of this case to review the administrative determination of plaintiff's claim by the Department of Highways, State of Louisiana.

THUS DONE AND SIGNED at Shreveport, Louisiana, this 19th day of July, 1976.

/s/ BEN C. DAWKINS, JR.
SENIOR JUDGE
United States District Court
Western District of Louisiana

APPENDIX O

(Title Omitted)
No. 17,678

MOTION TO TRANSMIT ADMINISTRATIVE RECORD FOR REVIEW AND FOR SUMMARY JUDGMENT—

NOW INTO COURT, through its undersigned counsel, comes Plaintiff, BEAIRD-POULAN, INC., and with respect moves the Court as follows:

1.

By order dated July 19, 1976, this Court ordered that Beaird-Poulan submit its claim for moving and relocation expenses to defendant, Department of Highways, State of Louisiana (DOH"), for administrative review.

2.

On July 30, 1976, Beaird-Poulan filed its claim with supporting documentation with Mr. Glenn L. Adcock, District Relocation Assistance Officer, District 04. On the same date, Mr. Adcock disapproved the claim and forwarded same to Baton Rouge. On or about October 21, 1976, Mr. Falcon A. Morgan, Relocation Assistance Officer, recommended that the disapproval of the claim be affirmed. On January 14, 1977, Mr. Richard A. Currie affirmed disapproval of the claim.

3.

An administrative record has been compiled and administrative review has been had. Plaintiff is aggrieved by the administrative determination and shows that same is contrary to the law and the evidence, and plaintiff desires that this Court review the administrative determination. Therefore, this Court should order that defendant, DOH, transmit to this Court the administrative record for review.

4.

There is no dispute as to any material fact and plaintiff is, as a matter of law, entitled to judgment upon the administrative record in its favor and against defendant, DOH, in the amount of $215,008.44, with interest thereon at the rate of 7% per annum from date of judicial demand until paid.

5.

The Court should enter an order fixing the time within which plaintiff and defendants may file their briefs and fixing this motion for summary judgment for hearing.

WHEREFORE, Beaird-Poulan prays that the Court:

1. Order that defendant, Department of Highways, transmit the administrative record to the Clerk of this Court for a review by this Court of the administrative determination;

2. Fix the time within which plaintiff and defendants may file their briefs and fix this motion for summary judgment for rehearing; and

3. Grant Summary Judgment in favor of plaintiff and against defendant, DOH, in the full sum of $215,-008.44, with interest thereon from the date of judicial demand until paid.

HARGROVE, GUYTON, RAMEY
AND BARLOW

/s/ THOMAS J. WYATT

Filed: Jan. 31, 1977

(Title Omitted)
No. 17,678

ORDER

CONSIDERING the foregoing motion,

IT IS ORDERED that defendant, DOH, file forthwith the administrative record of the claim of the plaintiff with the Clerk of Court.

IT IS FURTHER ORDERED that plaintiff file its brief

on the motion for summary judgment on or before (15) days after the administrative record is filed and that defendants file their briefs on or before fifteen (15) days thereafter.

IT IS FURTHER ORDERED that plaintiff's motion for summary judgment will be decided on the briefs to be filed.

DONE AND SIGNED in Chambers at Shreveport, Louisiana, this 31st day of January, 1977.

/s/ BEN C. DAWKINS, JR.
SENIOR JUDGE

Filed: Jan. 31, 1977.

APPENDIX P

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

BEAIRD-POULAN, INC.

versus CA No. 17,678

DEPARTMENT OF HIGHWAYS,
STATE OF LOUISIANA, and
CLAUDE S. BRINEGAR
(JOHN A. VOLPE), Secretary of Transportation

I.

OPPOSITION TO PLAINTIFF'S MOTION FOR TRANSMISSION OF ADMINISTRATIVE RECORD

II.

OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

III.

MOTION TO DISMISS COMPLAINT

IV.

ALTERNATIVE MOTION FOR SUMMARY JUDGMENT IN FAVOR OF DEFENDANT

I.

OPPOSITION TO PLAINTIFF'S MOTION FOR TRANSMISSION OF ADMINISTRATIVE RECORD

Defendant, Department of Transportation and Development of the State of Louisiana, legal successor to Department of Highways, (*see La. Act 1976, No. 513 (R.S.)*, opposes the plaintiff's motion for transmittal of the alleged administrative record of this agency for the reasons that:

(a) Plaintiff improperly attempts to enlarge the allegations of its complaint by motion to initiate a judicial review of administrative action; and,

(b) There is no jurisdiction in the Court under the judicial review provisions of 5 *U.S.C.* §§701 et seq., to review actions of the defendant agency.

II.

OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff enlarges its original complaint to incorporate by reference the alleged administrative record of the defendant; then, moves for judgment summarily in its favor based upon such record, under contradictory representations that,

(a) first, the defendant-agency's determination is contrary to the evidence (as well as the law), and,

(b) second, there is no dispute as to any material fact.

Defendant shows that plaintiff does not state a consistent cause in contending that factual determinations by the agency are disputed by the plaintiff and simultaneously requesting summary relief upon the contention that there are no factual disputes. Moreover, there are no factual showings by plaintiff to illustrate any basis for relief as a matter of law.

Finally, defendant opposes plaintiff's motion for judgment as being contrary to law.

III.

MOTION TO DISMISS COMPLAINT

The Department of Transportation and Development, State of Louisiana, moves to dismiss the complaint of the plaintiff for the following:

(a) As shown by the allegations of plaintiff's recent motion for review, the demands of the complaint are now *moot* since plaintiff has obtained administrative determination of its claims.

(b) Even if the complaint be considered as amended or supplemented by plaintiff's re-

cent motion for review, the complaint fails to state a claim upon which relief can be granted.

(c) This Court lacks jurisdiction of the subject matter.

IV.

ALTERNATIVE MOTION FOR SUMMARY JUDGMENT IN FAVOR OF DEFENDANT

Alternatively, if the Court have jurisdiction and if the claim be well stated and not be moot, then defendant shows that judicial review of the defendant-agency's determination is limited to questions of law, that the only facts of record are those found by the defendant-agency, and that upon those facts the agency is entitled to judgment in its favor as a matter of law, dismissing plaintiff's claims with prejudice.

BY ATTORNEYS,

WILLIAM W. IRWIN, JR.
JONATHAN C. HARRIS
SHARON P. FRAZIER

/s/ JONATHAN C. HARRIS
JONATHAN C. HARRIS
ASSISTANT GENERAL
COUNSEL
DEPARTMENT OF
TRANSPORTATION AND
DEVELOPMENT

APPENDIX Q

SUBCHAPTER I.—GENERAL PROVISIONS

§4601. Definitions

As used in this chapter—

* * *

(2) The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(3) The term "State agency" means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States.

* * *

(6) The term "displaced person" means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in

whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 4622(a) and (b) and 4625 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

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§4602. Effect upon property acquisition

(a) The provisions of section 4651 of this title create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to January 2, 1971.

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§4621. Declaration of policy

The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assist-

ed programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

---

§4622. Moving and related expenses—General provision

(a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

APPENDIX R

LEGISLATIVE HISTORY
P.L. 91-646

TITLE I—GENERAL PROVISIONS

Section 101. Definitions

This section defines for the purposes of the bill the terms: "Federal agency," "State," "State agency," "Federal financial assistance," "person," "displaced person," "business," "farm operation," and "mortgage." These definitions are self-explanatory except for the following:

(1) The National Capital Housing Authority and the District of Columbia Redevelopment Land Agency are excluded from the definition of "Federal agency" and are included in the definition of "State agency" since they function essentially as local urban renewal and public housing agencies and receive Federal financial assistance under such programs. The District of Columbia is defined as a State since it receives substantial amounts of Federal financial assistance under various programs which provide such assistance to State or local government agencies. (Activities of the District of Columbia for which no such Federal financial assistance program is available, and of the Washington Metropolitan Area Transit Authority, are made subject to the bill by section 209).

(2) The term "Federal financial assistance" means any grant, loan or contribution provided by the United States, except any Federal guarantee or insurance, any annual payment toward defraying the expenses of the Government of the District of Columbia, and any loans to the District of Columbia for capital outlay. These payments and loans to the District are excluded from the definition, inasmuch as they are comparable to State funds and their purpose is to enable the District to carry out its governmental functions, and, among other matters, to finance the general public works programs of the District, including school construction, sewer and water improvements, higher education facilities, and the District's contribution to the Washington Metropolitan Area Transit Authority for the construction of the rapid rail transit system; and to provide matching funds required by the District to participate in Federal financial assistance programs, such as urban renewal, public housing, Federal-aid highways, and model cities.

(3) The term "displaced person" means any person who, on or after the effective date of the act, moves from real property, or moves his personal property from real property as a result of the acquisition of such real property, or as the result of the written notice of the acquiring agency or any other authorized person to vacate such property, for a program or project undertaken by a Federal agency, or by a State agency with Federal financial assistance. If a person moves as the result of such a notice to vacate, it makes no difference whether or not the real property actually is acquired.

It is immaterial whether the real property is acquired before or after the effective date of the bill, or by Federal or State agency; or whether Federal funds contribute to the cost of the real property. The controlling point is that the real property must be acquired for a Federal or Federal financially assisted program or project. For example:

(a) A number of State highway departments frequently acquire rights-of-way for Federal-aid highways (usually, other than the Interstate System) with non-Federal funds, and seek Federal assistance only for the actual construction work. Persons required to move from such rights-of-way are recognized as displaced persons under the relocation provisions of the Federal-Aid Highway Act of 1968 and this bill affirms that principle.

(b) Post Office Department witnesses before the committee called attention to the fact that although the Department's construction requirements involve about 1,000 buildings annually, the postal building program, as such, accounts for only a few construction starts each year. Occasionally, the Department acquires the site and transfers it to the successful bidder for construction and lease back to the Department. In most cases, however, building sites are obtained through the Department's leasing authority. Usually, the sites are controlled through an option procedure with title neither vesting in or passing through the Post Office Department. Instead, the option is assigned to a

successful bidder who becomes the owner of the land, and the Department's long-term lessor. Some of these sites are for large postal facilities to be constructed in metropolitan areas where the only available and suitable land is occupied by numerous low-income individuals and families, and by small businesses.

It makes no difference to a person required to move because of the development of a postal facility which method the postal authorities use to obtain the facility, or who acquires the site or holds the fee title to the property. Since the end product is the same, a facility which serves the public and is regarded by the public as a public building, any person so required to move is a displaced person entitled to the benefits of this legislation.

Whenever the acquisition of real property used for a business or farm operation causes any person to move from other real property used for his dwelling, or to move his personal property from such other real property, on or after the effective date of the Act, such person may receive payments for moving and related expenses under subsections (a) and (b) of section 202, and relocation advisory assistance under section 205. For example, the acquisition of right-of-way for a highway improvement in a remote locality may include a general store and gas station, but exclude the operator's nearby dwelling or storage facility; or, the acquisition of real property used as a business or farm operation for a reservoir project may exclude the oper-

ator's dwelling located adjacent to, but outside the project boundaries.

Section 102. Finality of determinations

This action provides that any determination by the head of the Federal agency administering a program or project, as to payments under the act, shall be final, and that this act does not give any person a cause of action or a defense to an action in any court, or create any new elements of value or damage in any eminent domain proceedings. It states also that the provisions of the uniform policy on land acquisition practices, in section 301, do not create any rights or liabilities in any person and do not affect the validity of any acquisition by purchase or condemnation.

The committee has considered, but does not agree with, proposals which would make the benefits provided by the bill subject to judicial review. The committee agrees with the judgment of the Department of Justice, and others, who believe that this would add an unnecessary burden to the overcrowded courts. The primary purpose of the judicial review proposals is to give recognition to the principle that such benefits should be viewed as administrative payments to displaced persons. The committee believes that this objective can be achieved by the clear language of the bill which makes relocation payments and assistance, and the availability of suitable replacement housing for displaced persons, matters of congressional policy and

makes agency heads responsible for faithful execution. Section 213(b)(3) of the bill provides an alternate to judicial review, by requiring the heads of Federal agencies to establish regulations and procedures that will assure any person aggrieved by a determination as to eligibility for a payment authorized by this act, or the amount of the payment, may have his application reviewed by the head of the Federal agency having authority over the project; or in the case of a program receiving Federal financial assistance, by the head of the State agency.

APPENDIX S

LSA: R.S. 38:3101-3109

CHAPTER 14. RELOCATION ASSISTANCE (NEW)

§3101. Definitions

When used in this Chapter:

(1) "Agency" means the state of Louisiana, its municipalities or parishes, or the agencies of any of them, including particularly, but not exclusively, the Department of Transportation and Development.

(2) "Person" means any individual, partnership, corporation or association.

(3) "Displaced person" means

(a) any person who, on or after the effective date of this chapter, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by an agency; and solely for the purposes of R.S. 38:3104(A) and (B) and R.S. 38:3103, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project; or

(b) any person who moves or discontinues his business or moves other personal property, or moves from his dwelling on or after the effective date of this chapter as the direct result of code enforcement, demolition or interim assistance activities, or a program of rehabilitation of buildings conducted pursuant to a governmental program.

(4) "Business" means any lawful activity, excepting a farm operation, conducted primarily—

(a) for the purchase, sale, lease, and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) for the sale of services to the public;

(c) by a nonprofit organization; or

(d) solely for the purpose of R.S. 38:3104(A), for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(5) "Farm operation" shall mean any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

§3102. Administration of relocation assistance programs

In order to prevent unnecessary expenses and duplication of functions, the agency may make relocation payments or provide relocation assistance or otherwise carry out the functions required under this Chapter by utilizing the facilities, personnel, and services of any other federal, state or local governmental agency having an established organization for conducting relocation assistance programs.

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§3107. Delegation of authority to adopt rules and regulations

The agency head is authorized to adopt such rules and regulations as he deems necessary and appropriate to carry out provisions of this Chapter. The agency head is authorized and empowered to adopt all or any part of applicable federal rules and regulations which are necessary or desirable to implement this Chapter. Such rules and regulations may include, but not be limited to, provisioins relating to:

(A) Payments authorized by this Chapter to assure that such payments shall be fair and reasonable and as uniform as possible.

(B) Prompt payment after a move to displaced persons who make proper application and are entitled to payment, or, in hardship cases, payment in advance.

(C) Moving expense allowances as provided for in R.S. 38:3104(A) and (B).

(D) Standards for decent, safe, and sanitary dwellings.

(E) Eligibility of displaced persons for relocation assistance payments, the procedure for such persons to claim such payments, and the amount thereof.

(F) Procedure for an aggrieved displaced person to have his determination of eligibility or amount of payment reviewed by the head of the agency.

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§3108. Eminent domain

Nothing contained in this chapter shall be construed as creating, in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence on the date of enactment of this Chapter. Any payments herein authorized are gratuities and are vested in the discretion of the agency head.

---

§3109. Fund availability

Funds dedicated, appropriated or otherwise available to any state agency or unit of local government for the acquisition of real property or any interest therein for a particular program or project shall be available also for obligation and expenditure to carry out the provisions of this Chapter as applied to that program or project.

APPENDIX T

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

BEFORE THE SOUTH CAROLINA
STATE HIGHWAY COMMISSION

IN RE:

Application for relocation
assistance of William O. Sutton
d/b/a Godfrey's Auto Parts,
File 40.671, Project QI-77-1(11)
Tract 86

ORDER

STATEMENT OF THE PROCEEDINGS

On September 10, 1975, pursuant to regulations of the Department filed April 2, 1974, a hearing was held in the Commission Room, South Carolina State Highway Department Building, Columbia, South Carolina before W. T. Brooks, Secretary-Treasurer and Paul W. Cobb, State Highway Engineer, both of the South Carolina State Highway Department (hereinafter

Department) appointed by me to review the application of William O. Sutton (hereinafter Sutton) for relocation assistance payments as a result of the acquisition of a portion of Tract 86 on Project QI-77-1(11) File 40.761 through condemnation in fee simple by the Department on April 3, 1975.

The essential purpose of this hearing was to review a decision of employees of the Department denying Sutton relocation assistance for the removal of personal property located without, but on property abutting, the right of way, acquired from Tract 86. Sutton operates an automobile junkyard known as Godfrey's Auto Parts on Tract 86. He has requested that the Department relocate the entire automobile junkyard. At the hearing, testimony was offered by Mr. Sutton and by Lemuel Triplett, Jr., Frederick Gardner and James L. Anderson, all employees of the Department. By stipulation of counsel, testimony was received without swearing of witnesses. Following the hearing and pursuant to the above referenced regulations, Mr. Brooks and Mr. Cobb on November 7, 1975 submitted a recommendation to the Chief Highway Commissioner (hereinafter Commissioner) said order containing certain recommended findings of fact and conclusions of law.

Thereafter, on November 14, 1975, attorneys for Sutton filed with the Commissioner an Answer to the order of Messrs. Brooks and Cobb with exceptions. The Department has not taken any exceptions to the

order of Messrs. Brooks and Cobb. In making the foregoing ruling, the Commissioner has had the benefit of the Order of November 7, 1975, an answer with exceptions of the claimant dated November 14, 1975, a memorandum of fact and law submitted by attorneys for Sutton on February 3, 1976, a memorandum prepared by attorney for the Highway Department and dated September 10, 1975, a transcript of the hearing before Messrs. Brooks and Cobb and various exhibits and documents presented at the hearing.

FINDING OF FACT

I.

Based on the evidence presented to me and the recommended findings of fact submitted in the order of November 7, 1976, the following findings of Messrs. Brooks and Cobb with which Mr. Sutton does not take issue, are adopted:

1. The Department is constructing improvements to U.S. Highway 1 (Two Notch Road) in Richland County under Project No. QI-77-1(11), File No. 40.761.

2. Tract 86 is an 8-acre tract owned by William W. Godshall.

3. The Department has acquired 0.57 acres of Tract 86 as right of way for Project No. QI-77-1(11), File No. 40.761. (hereinafter the acquired right of way).

4. The 8-acre Godshall tract fronts on U.S. Highway 1 and is situated on the side of a hill so that, with the exception of a limited amount of relatively flat land along the edge of U.S. Highway 1 and at the back of the tract (furtherest from U.S. Highway 1), the property slopes steeply down from the grade of U.S. Highway 1, a change in elevation of approximately 40 feet from U.S. Highway 1 to the back of the property.

5. Sutton has leased from Godshall 6 acres of Tract 86. This lease is recorded with the records of the Clerk of Court for Richland County in Deed Book D-309 at page 619. The lease is for a 3-year term commencing March 15, 1974 and ending March 14, 1977. The lease does not provide for renewal.

6. As an automobile junkyard, Godfrey's Auto Parts is in the business of selling used automobile parts to the public. Sutton acquires and stores as inventory wrecked or junked automobiles. Some parts are stripped and stored for subsequent sale by employees of Sutton; other parts are stripped by customers who pay Sutton for this right. The most valuable automobile bodies are stored adjacent to the right of way on U.S. Highway 1; however, as parts are removed and the value of the remainder diminishes the hulks are moved further and further to the back of the lot. From time to time an automobile crusher is brought in to crush and haul away those wrecks at the back of the lot which are of minimal value, thus making room for new acquisitions.

7. There is also on the 8-acre tract approximately 400 motors and other miscellaneous equipment.

II.

Exception was taken by Sutton to several findings of fact recommended by Messrs. Brooks and Cobb. I have reviewed the evidence presented at the hearing and find certain of these exceptions to be justified. Therefore, based on the evidence, memoranda and exhibits presented, I make the following additional findings of fact:

8. Sutton operates an automobile junkyard called Godfrey's Used Parts on six leased acres. He also makes use of two remaining acres of the 8-acre tract owned by Godshall for storage of wrecked automobiles. Sutton's use of the remaining two acres is at the pleasure of Godshall and Sutton's use of this portion is subject to termination at any time.

9. There are approximately 800-850 wrecked or junk automobiles on the entire 8-acre tract, of these 150 to 200 are on the back of the lot, have been substantially stripped, are of minimal value and would be sold by Sutton to a car crushing operation for approximately $15.00 a piece if Sutton were compelled to relocate his business. Approximately 175-200 wrecked or junk automobiles are on the relatively flat land adjacent to U.S. Highway 1; of these vehicles, 41 are within the acquired right of way.

10. Structures on the 8-acre tract include: a concrete block building used as an office and for sales and storage of faster moving items, the building being wholly within the acquired right of way; a corregated metal building used for parts storage, approximately 2/3's of which is within the acquired right of way; and a frame shed used as a paint shed, wholly outside of the acquired right of way.

III.

Sutton takes issue with the remaining findings of fact contained in the order of Messrs. Brooks and Cobb, identified as paragraph eleven, twelve, thirteen and fourteen therein.

A.

I have reviewed the proposed finding of fact contained in paragraph eleven, in light of the exceptions presented by Sutton and make the following finding:

11. There are seven employees of Godfrey's Auto Parts: five full time employees including Sutton, and two individuals hired as part time summer help. Sutton keeps two employees in the office located in the concrete block structure. (See paragraph 12, *infra.*). One employee works in the paint shed; his activities will not be affected by the acquisition of the highway right of way. All other employees are engaged generally around the 8-acre tract, stripping parts, moving vehicles about the lot, driving a wrecker, etc. Mr. Sutton testified, and I find that some additional walking may be required of

these employees, but I find further that these employees will be able to perform their duties in a fashion substantially similar to their performance before the acquisition of the highway right of way.

The testimony at the relocation hearing fully supports this finding. Mr. Sutton, under questioning by Mr. Jones, testified that as a result of the relocation of the 41 automobiles, some of his employees would have to walk a little further. (*See:* p. 27, lines 16-17). In addition, Mr. Sutton testified that the relocation would not affect the activities of his part time employees. (*See:* p. 25, lines 4-5).

B.

I have reviewed the proposed finding of fact contained in paragraph 12 in light of the exceptions presented by Sutton, and make the following finding:

12. Sutton testified, and I find, that two employees are kept in the concrete building handling relations with customers, bookkeeping and other miscellaneous duties. Since the concrete building has been acquired by the Department, these activities will have to be relocated. However, I find that the bookkeeping and other miscellaneous record keeping duties of the business do not possess that relationship to the business activities of Godfrey's Auto Parts that a relocation of the place of performance of those duties would cause a reasonable man facing the same dilemma, not other-

wise eligible for relocation assistance to relocate an entire business activity of the nature of Godfrey's Auto Parts.

In taking exception to the above, Mr. Sutton contends that the lack of an existing physical structure into which he could relocate his activities now conducted in the concrete building would cause a reasonable man to relocate the entire operation. It appears to be Mr. Sutton's contention that because of his leasehold interest, it would not be sound business judgment to invest either in moving the present structure or constructing a replacement building. While men may differ as to what may or may not be reasonable, I believe the finding of the hearing officers to be correct. At his present location, Mr. Sutton has the advantage of an established business location, known to his customers. This is a business asset not lightly thrown away. Additionally, Mr. Sutton noted that it will cost approximately $17,000 or $18,000 to relocate all of his automobiles to a new location.

C.

I have reviewed the proposed finding of fact contained in paragraph thirteen in light of the exceptions presented by Sutton and make the following finding:

13. Obviously, from the nature of the business, customer relations and sales must be conducted on the property whereon the wrecked and derelict automobile bodies are located. Sutton testified that so called "fast moving" items such as alternators and gene-

rators are kept in the concrete block building presumably for the convenience of customers and employees engaged in sales. Presumably the building also houses a cash register. However, I find that performance of customer relations and sales activities will not be so adversely affected by the loss of the concrete block building that a reasonable man exercising ordinary business judgment under similar circumstances, not eligible for relocation assistance, would relocate an entire business activity of the nature of Godfrey's Auto Parts.

The building referred to above is undisputably real property. It was acquired by condemnation and Mr. Sutton, as tenant, was compensated or enjoys a right to compensation for his leasehold interest in this property. However, this claim is for relocation assistance and does not arise out of the law of eminent domain. It is undisputed that the Highway Department will relocate all of the personal property within the said building to a location of Mr. Sutton's choosing, be it on the remainder of the Godshall tract or to some other location.

Therefore, the issue is whether considering the facts of this case and the nature of Mr. Sutton's business, a reasonable man in the same dilemma and not having any additional relocation assistance would be caused to relocate as a result of the loss of this building. As an element of this decision, it was necessary for me to consider if the loss of the building under the conditions described herein is so adverse to the performance of cus-

tomers' relations and sales activities as to cause a reasonable man to relocate the entire business. While it is recognized that a replacement building may be necessary for the continuation of this business enterprise, it is my opinion that a reasonable man would not relocate his entire business because of the loss of this particular building. Located on the remaining property are all but 41 of the same 800 junked automobiles owned by Mr. Sutton. Also there is the paint shop where one of Mr. Sutton's five employees works. Only two of Mr. Sutton's employees work in this particular building, and these not full time. A large portion of Mr. Sutton's operation is the stripping of wrecked automobiles of useable parts. Some automobiles and parts are apparently repaired by Mr. Sutton's mechanic. Also, Mr. Sutton operates a wrecker service of sorts. All of these activities occur outside of this building. In fact, some of the stripping is done by customers on the lot. Finally, "junkers" are placed to the rear of the property and sold to a crushing operation. Therefore, it is obvious that the central focus of Mr. Sutton's business is these junked automobiles which are not being displaced. This realization when coupled with the previously cited facts that compensation for the real property has been provided and relocation assistance for the removal of the personal property is available conclusively supports my findings of fact in paragraph 13.

As part of his exception to the findings in paragraph 13, Sutton again raises the issue of "stacking" automobiles. However, it is agreed that only 41 vehicles are

within the right of way out of a total of 800-850 vehicles. Assuming that there was no additional space for these 41 vehicles on the remainder of the lot, it would still seem that a very small percentage (approximately 5%) of the vehicles would have to be stacked.

D.

I have reviewed the proposed finding of fact contained in paragraph fourteen in light of the exceptions presented by Sutton and make the following finding:

14. I find that the relocation of 41 wrecked or junk automobiles of a total of 800-850 (approximately 5%), see paragraph 8, *supra*, does not constitute such a detriment to Godfrey's Auto Parts that a reasonable man exercising ordinary business judgment under like circumstances, not eligible for relocation assistance, would relocate an entire business activity of the nature of Godfrey's Auto Parts.

The testimony fully supports the above findings of fact. Apparently it is the contention of Mr. Sutton that the relocation of the 41 automobiles and the concrete building, combined with a requirement for parking would result in insufficient space to operate his business without "stacking" a number of automobiles. This "stacking" would in turn create difficulties in the salvage work done on the automobiles. This argument is unconvincing in view of Mr. Sutton's own testimony. At one point, Mr. Sutton allows that the remaining

land area is sufficient to operate his business (See p. 9, line 20) and at another time he notes that if the land were graded somewhat he would have sufficient room to operate on the same property. (See p. 11, lines 19-20). It is not denied by the Highway Department that the continued operation of Godfrey's Auto Parts may require some modification of the existing property or some inconvenience. However, the Highway Department maintains and I find that these conditions are not so adverse as would result in a reasonable man relocating the entire business. Further, issues of slight modification of the property which may be necessary or desirable are not properly raised in a claim for relocation assistance, since even if true, they constitute proximity damage to the remainder for which the owner and lessee have a remedy at the time of condemnation.

E.

I have reviewed the proposed findings of fact contained in paragraph fifteen in light of the exceptions presented by Sutton and make the following finding of fact.

15. I further find that the adverse effects of the acquisition of the highway right of way as described in these recommended findings of fact, when taken together, do not so adversely affect the business activities of Godfrey's Auto Parts that a reasonable man under all of the circumstances described herein, without relocation assistance, would relocate the entire

business activity of Godfrey's Auto Parts as a result of the acquisition of the highway right of way.

It should be noted that Sutton's exception to the above is merely a general denial of the accuracy of the finding. However, for all of the reasons previously set out in this order, I find that the above is fully supported by the evidence.

IV.

In addition to the foregoing, Sutton takes issue with all of the findings of fact on the ground that they did not physically inspect Sutton's property before rendering a decision but relied solely on the evidence presented to them at the hearing in making their proposed findings of fact.

The finders of fact are under no obligation to visit the site of the relocation. This is a matter within their discretion and if they are of the opinion that the information presented to them at the hearing is sufficient for them to make their determinations, this opinion will stand. I find as a fact that the evidence and testimony presented at the relocation hearing including plan sheets and numerous color photographs of the area were a sufficient basis for the panel's findings of fact and that it was not an abuse of discretion, nor was it arbitrary and capricious, for Messrs. Brooks and Cobb to make their findings without physically inspecting Sutton's property.

CONCLUSIONS OF LAW

I have reviewed the conclusions of law presented by Messrs. Brooks and Cobb and those presented by attorneys for Sutton and am of the opinion that the conclusions of Messrs. Brooks and Cobb reflect a more accurate and correct statement of the law. Therefore, I make the following conclusion of law. It should be noted that Sutton does not dispute the conclusions presented in paragraphs one, two and three.

1. Code of Laws of South Carolina §25-181 adopts the program of relocation payments and assistance of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, P.L. 91-646, 42 *U.S.C.A.* §4601, *et seq.* (1973) as such statute has been made applicable to federally-assisted State programs and projects, for all state programs and projects requiring the acquisition of real property.

2. Whenever the acquisition of real property for a program or project results in the displacement of any person, relocation assistance must be provided to that displaced person. 42 *U.S.C.A.* §4622.

3. A person is a "displaced person" whenever he moves from or moves personal property from real property as a result of the acquisition of such real property in whole or in part by a State agency for a State program or project. 42 *U.S.C.A.* §4601(6).

4. Further, a "displaced person" is a person who moves from or moves personal property from real property on which such person conducts a business or farm operation, as a result of the acquisition of, or as the result of the written order of the acquiring agency to vacate other real property acquired for a State program or project. 42 *U.S.C.A.* §4601(6). This language has been interpreted by the Federal Highway Administration to mean that relocation assistance is available to a person under the terms of this provision for relocation of personal property outside of the newly acquired right of way only when the acquisition "*causes* a person to vacate . . . his personal property from the real property not acquired. . . ." Federal Highway Administration PPM 81-1.2 para. 3. A. (2)(September 17, 1973) (Emphasis added). More recently, the Federal Highway Administration has promulgated rules and regulations to establish procedures for relocation assistance, 40 Fed. Reg. 41040 (Sept. 4, 1975). Although this regulation was not in effect at the time of the acquisition of the highway right of way herein, I may properly use it as some persuasive authority as to the meaning of the relocation assistance statute. This regulation provides that qualification as a displaced person requires, in pertinent part, that the move of personal property from real property be a "*direct result*" of the initiation of negotiations for other real property on which he conducts a business or farm operation, 49 CFR §25.11, as amended, 40 Fed. Reg. 41042. Thus, it appears that to determine whether a person is a "displaced person" and eligible for relocation assistance,

there must be a causative relationship between the acquisition and the move. This relationship is most clearly demonstrated when the person is on the property acquired. There is a clear relationship between the acquisition and the need to move the owner or tenant. Where the move is from property other than that acquired by the condemning agency, it seems to me that the rule must be that the move must result from the acquisition of other property and not from some other stimulus. This view is supported by the statute ("as a result of the acquisition of . . .") 42 *U.S.C.A.* §4601(6), the FHWA policy and procedure memorandum ("causes a person to vacate . . ." PPM 81-1.2, *supra*) and by the new FHWA regulations ("the move is a direct result of . . ." 49 CFR §25.11, *supra*).

However, typically the case arises prior to the actual move. Such facts are before us now. Under these circumstances, I think that the proper test is whether the acquisition by condemning authority of real property so affects the business interests on other real property that a reasonable owner of a business in like circumstances to that under consideration, in the ordinary exercise of business judgment, would find the continued operation of his business to be so affected by the acquisition of such other real property that he would move personal property of the business outside of the right of way, without regard to the availability of relocation assistance payments.

Therefore, it is my decision that relocation assistance be provided in an amount sufficient to move personal property of the applicant which is located within the acquired right of way. No relocation assistance shall be provided for the relocation of personal property of the applicant located outside of the acquired right of way.

/s/ S. N. PEARMAN
S. N. PEARMAN
Chief Highway Commissioner

Date: May 7, 1976

APPENDIX U

Title 28 Section 1254 provides:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

* * *

APPENDIX V

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 78-1242

BEAIRD-POULAN, INC.,
Plaintiff-Appellant,
Cross-Appellee,

versus

DEPARTMENT OF HIGHWAYS,
STATE OF LOUISIANA,
Defendant-Appellee,
Cross-Appellant.

* * * CONSOLIDATED WITH * * *

No. 78-2904

BEAIRD-POULAN, INC.,
Plaintiff-Appellee,

versus

DEPARTMENT OF HIGHWAYS,
STATE OF LOUISIANA,
Defendant-Appellant.

MOTION TO DISMISS
FOR LACK OF JURISDICTION

The Louisiana Department of Highways (now the Louisiana Department of Transportation and Development), Defendant-Appellee in the above consolidated matters, moves the Court to dismiss the above consolidated matters, for the following, to-wit:

1.

The United States Federal Court did not have jurisdiction to grant the relief awarded in the Judgment of the above consolidated matters.

2.

This Court rendered a *"per curiam decision"*, in which it adopted the Judgment of the United States District Court (1980), *616 F(2d) 255*.

3.

The time for rehearing from the Judgment of the Fifth Circuit Court of Appeals is passed; that mover has until the 29th of July, 1980 in which to apply for a writ of review to the United States Supreme Court.

4.

That while researching this matter, it has come to the attention of Louisiana that the 11th Amendment of the United States Constitution grants it immunity

from prosecution in the United States Federal Court in matters involving citizens of another state against Louisiana, where the funds for the payment of relocation costs are paid by the Louisiana State Treasurer.

5.

That an Affidavit of Richard A. Currie, the Real Estate Administrator for the Louisiana Department of Transportation, who has the responsibility for the acquisition of properties in expropriation matters, which includes the payment of relocation and moving expenses, acknowledges that checks issued for the payment of relocation and moving expenses, are paid by the Comptroller of the *Louisiana* Department of Transportation and Development, on a bank where funds are deposited by the Louisiana State Treasurer to cover the issuance of the check for the relocation costs.

6.

That the Supreme Court of the United States, in several cases, has concluded as well as decisions of other circuits, that the United States Federal Court may entertain on its own motion the question of jurisdiction raised by immunity granted to Louisiana and other States, by the provisions of the 11th Amendment of the United States Constitution.

WHEREFORE, this Court should dismiss the above consolidated cases, on the grounds that the Court lacks jurisdiction.

This Court should recognize the United States Federal Court did not have jurisdiction at the outset of this litigation, and this Court did not have jurisdiction to grant the *"per curiam decision"*, and should give serious consideration to the dismissal of these consolidated matters, for lack of United States Federal Court jurisdiction.

Respectfully submitted,

WILLIAM W. IRWIN, JR. and
JESSE S. GUILLOT,
Attorneys for the LOUISIANA
DEPARTMENT OF
TRANSPORTATION AND
DEVELOPMENT,
Defendant-Appellee

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ORDER

The Court considering the above and foregoing Motion, and Memorandum filed on the Motion by the Louisiana Department of Transportation and Development, should order Thomas J. Wyatt, Attorney for Beaird-Poulan, Inc., Plaintiff-Appellant, to file such opposition as he may have, as to why this Court should not dismiss the above consolidated matters, for lack of Federal Court jurisdiction.

THIS, the ____ day of July, 1980, at New Orleans, Louisiana.

_____

JUDGE

PROOF OF SERVICE

STATE OF LOUISIANA

PARISH OF ORLEANS:

BEFORE ME, the undersigned authority, personally came and appeared:

WILLIAM W. IRWIN, JR.,

who, after being duly sworn, did depose and say that a copy of the above and foregoing Motion and the Memorandum on the Motion, has been sent to Thomas J. Wyatt, Attorney for Beaird-Poulan, Inc., 1100 Mid

South Towers, P. O. Drawer B, Shreveport, Louisiana, 71161, by placing same in the United States Mail, postage prepaid, on this 21st day of July, 1980, at New Orleans, Louisiana.

WILLIAM W. IRWIN, JR.

SWORN TO AND SUBSCRIBED
BEFORE ME, THIS 21ST
DAY OF JULY, 1980.

NOTARY PUBLIC

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned, a Notary Public, in and for the Parish of East Baton Rouge, State of Louisiana, personally came and appeared RICHARD A. CURRIE, who, after being duly sworn, did depose and say that:

1. He is the Real Estate Administrator for the Louisiana Department of Transportation and Development (formerly the Department of Highways, State of Louisiana); that he has been employed by the said Department since 1955,

and with the Right-of-Way and Real Estate Section since 1961; that he has the overall responsibility for the acquisition of all real estate and rights-of-way, both amicably and by means of expropriation proceedings; that his responsibility also includes the relocation of displaced individuals, families, businesses, farms, non-profit organizations, and payments for moving costs.

2. He is familiar with the policies and procedures of the Department regarding the payments for all such acquisitions, including the payment of moving costs; that these payments are made from State funds, which payments are initiated by the preparation of a voucher in the Real Estate Section, signed by your deponent, resulting in a check being issued by the Financial Services Section; that the check is signed by the Comptroller and Secretary of the Department, drawn against a local commercial bank, where funds have been deposited by the Treasurer of the State of Louisiana.

/s/ RICHARD A. CURRIE
RICHARD A. CURRIE

Sworn to and subscribed before me, this 7th day of July, 1980.

/s/ ROBERT R. ROCHE
Notary Public